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SENATE

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INTER-AMERICAN CONVENTION ON SERVING
CRIMINAL SENTENCES ABROAD

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

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 OAS HEADQUARTERS IN WASHINGTON ON JANUARY 10, 1995



SEPTEMBER 30, 1996.—Convention 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

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WASHINGTON : 1996

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 30, 1996.*

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 Inter-American Convention on Serving Criminal Sentences Abroad, drawn up by the Committee on Juridical and Political Affairs within the Permanent Council of the Organization of American States (OAS) and composed of representatives of the Member States. The Convention was adopted and opened for signature at the twenty-third regular session of the General Assembly meeting in Managua, Nicaragua, on June 9, 1993, and signed on behalf of the United States at the OAS Headquarters in Washington on January 10, 1995. The provisions of the Convention are explained in the report of the Department of State that accompanies this message.

Although the United States is already a party to the multilateral Council of Europe Convention on the Transfer of Sentenced Persons, which entered into force for the United States, following Senate advice and consent to ratification, on July 1, 1985, only two other OAS Member States have become parties to that Convention. Ratification of the Inter-American Convention on Serving Criminal Sentences Abroad would help fill a void by providing a mechanism for the reciprocal transfer of persons incarcerated in prisons in OAS Member States, to permit those individuals to serve their sentences in their home countries. A multilateral prisoner transfer convention for the Americas would also reduce, if not eliminate, the need for the United States to negotiate additional bilateral prisoner transfer treaties with countries in the hemisphere.

I recommend that the Senate promptly give its advice and consent to the ratification of this Convention, subject to an understanding and a reservation that are described in the accompanying State Department report.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, August 9, 1996.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with the recommendation that it be transmitted to the Senate for its advice and consent to ratification, the Inter-American Convention on Serving Criminal Sentences Abroad, which was adopted and opened for signature at the twenty-third regular session of the OAS General Assembly meeting in Managua, Nicaragua, on June 9, 1993. It was signed on behalf of the United States at the OAS Headquarters in Washington on January 10, 1995. As of April 13, 1996, it had been signed by six other countries: Costa Rica, Venezuela, Canada, Panama, Mexico, and Ecuador. Two countries, Canada and Venezuela, have deposited instruments of ratification: Canada on June 4, 1995, and Venezuela on March 14, 1996. The Convention entered into force on April 13, 1996, thirty days after the deposit of the second instrument of ratification. The Department of State is hopeful that once the United States ratifies the Convention, other states in the region will take the necessary steps to become party to the Convention.

The purpose of the Convention is to facilitate the transfer of foreign prisoners to their home countries by establishing procedures that can be initiated by prisoners who prefer to serve their sentences there. The means employed to achieve this purpose are basically similar to those embodied in bilateral prisoner transfer treaties that are now in force between the United States and eight other countries, and in the multilateral Council of Europe Convention on the Transfer of Sentenced Persons. The major advantages of concluding a multilateral convention with the OAS member States are the establishment of uniform procedures and the saving of resources that would be required to negotiate and bring into force bilateral treaties with a large number of countries in the hemisphere.

The general principles of the Convention are stated in Article II, in which the parties undertake to afford each other the fullest cooperation in respect of the transfer of sentenced persons. The Article provides, subject to the conditions of Article 3, that a sentence imposed upon a national of another state party may be served by the sentenced person in the state of which that person is a national.

Article III sets out the conditions for transfer. The seven conditions are: that the sentence is final; that the sentenced person con-

sents to the transfer, having been previously informed of the legal consequences of such a transfer; that the act for which the sentence has been imposed constitutes a crime in the State to which the prisoner is to be transferred; that the person is a national of the state to which he or she is to be transferred; that the sentence to be served is not the death penalty; that at least six months of the sentence remains to be served at the time the request for transfer is made; and that administration of the sentence is not contrary to domestic law in the state to which the person is to be transferred.

Article IV obliges a Party to inform any sentenced person to whom the Convention may apply of the substance of the Convention. Provision is also made for keeping the sentenced person informed of the processing of a transfer request.

Articles V and VI provide modalities for processing requests and replies and specify supporting documents that may be required in connection with transfer requests. Article V states that a request for transfer of a sentenced person from one state to another may be made by the sentencing state, the receiving state, or the sentenced person. Article V also provides that if the sentence is handed down by a state or province with criminal jurisdiction independent from that of the federal government, the approval of the authorities of that state or province shall be required for the transfer. Article VI requires that the sentencing state inform the requesting state immediately of its decision not to approve the transfer of a sentenced person, and, whenever appropriate, explain its reasons for the refusal.

To ensure that the Convention may be implemented consistently with existing legislation pertaining to prisoner transfer, I recommend that the following understanding to Articles III, IV, V, and VI be included in the United States instrument of ratification:

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.

I also recommend the following reservation to Article V:

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.

Article VII deals with the rights of the sentenced person. A sentenced person who is transferred under this Convention may not be arrested, tried, or sentenced again in the receiving state for the same offense upon which the sentence to be executed is based. Ex-

cept as provided under Article VIII, the sentence of a sentenced person who is transferred shall be served in accordance with the laws and procedures of the receiving state, including application of any provisions relating to reduction of time of imprisonment or of alternative service of the sentence. The receiving state may not enforce a sentence so as to lengthen that sentence beyond the date on which it would expire under the terms of the sentence of the court in the sentencing state.

Article VIII provides that the sentencing state shall retain full jurisdiction for the review of sentences issued by its courts, and retains the power to grant pardon, amnesty, or mercy to the sentenced person. Upon notification to the receiving state of such decision, that state must take the corresponding measures immediately.

Article IX provides for the application of the Convention in special cases. Recognizing that this Convention may be applicable to persons subject to supervision or other measures under one of the state party's laws relating to youthful offenders, consent for the transfer of such persons shall be obtained from the person legally authorized to grant it. Also, by special agreement between the parties, the Convention may be applied to persons whom the competent authority in the sentencing state has pronounced unindictable (most likely, because the appropriate authorities have judged the persons mentally incompetent), so that such persons may receive treatment in the receiving state. In accordance with their laws, the parties shall agree on the type of treatment to be accorded such individuals upon transfer. For the transfer, consent must be obtained from the person legally authorized to grant it.

Article X deals with the transfer of a sentenced person across the territory of a third state party to the convention. In such case, the third state shall be notified by transmittal of the decision granting the transfer by the state under whose custody the transfer is to be effected. The state of transit may or may not consent to the transit of the sentenced person through its territory.

Article XI provides that each state party shall, upon signing, ratifying, or acceding to the Convention, advise the General Secretariat of the Organization of American States of the central authority it has designated to perform the functions under the Convention. For the United States, the central authority shall be the U.S. Attorney General, who also has that responsibility under the multilateral Council of Europe Convention on the Transfer of Sentenced Persons, as well as under the bilateral prisoner transfer treaties between the United States and other countries.

Article XII provides that none of the stipulations of the Convention shall be construed to restrict other bilateral or multilateral treaties or other agreements between the parties.

Articles XIII to XIX contain the final clauses of the Convention. Article XVI permits states to set forth reservations to the Convention at such time as they approve, sign, ratify, or accede to it. Article XVIII deals with denunciation of the Convention by one of the parties. Any state party may denounce the Convention at any time by registering its denunciation with the General Secretariat of the Organization of American States; denunciation shall be effective one year from the date of such denunciation. The provisions of the

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Convention shall remain in force, however, for the denouncing state with respect to sentenced persons transferred in accordance with the Convention, until the respective sentences have been served. Requests for transfer being processed at the time the Convention is denounced would continue to be processed and executed unless the parties agreed otherwise.

It is my belief that this Convention affords substantial benefits to the United States. With the proposed understanding, the Convention is fully consistent with the provisions of Public Law 95-144, 18 U.S.C. §§ 4110-4115, enacted by the Congress to implement treaties relating to the transfer of offenders to or from foreign countries. No new legislation will be required.

The Department of Justice joins in recommending that this Convention be transmitted to the Senate at an early date for its advice and consent to ratification, subject to the understanding and reservation to Articles III, IV, V, and VI previously described.

Respectfully submitted,

WARREN CHRISTOPHER.

**INTER-AMERICAN CONVENTION ON
SERVING CRIMINAL SENTENCES ABROAD**

THE MEMBER STATES OF THE ORGANIZATION OF AMERICAN STATES,

CONSIDERING that, according to Article 2.e of the OAS Charter, one of the essential purposes of the Organization of American States is to "seek the solution of political, juridical and economic problems that may arise among them";

INSPIRED BY THE DESIRE to cooperate to ensure improved administration of justice through the social rehabilitation of the sentenced persons;

PERSUADED that to attain these ends, it is advisable that the sentenced person be given an opportunity to serve the sentence in the country of which the sentenced person is a national; and

CONVINCED that the way to bring about this result is to transfer the sentenced person,

RESOLVES to adopt the following Inter-American Convention on Serving Criminal Sentences Abroad:

ARTICLE I - DEFINITIONS

For the purposes of this convention:

1. *Sentencing state*: means the state party from which the sentenced person would be transferred.
2. *Receiving state*: means the state party to which the sentenced person would be transferred.
3. *Sentence*: means the final judicial decision imposing, as a penalty for the commission of a criminal offense, imprisonment or a term of parole, probation, or other form of supervision without imprisonment. A sentence is understood to be final when no ordinary legal appeal against the conviction or sentence is pending in the sentencing state and the period for its appeal has expired.
4. *Sentenced person*: means the person who is to serve or is serving a sentence in the territory of a state party.

ARTICLE II - GENERAL PRINCIPLES

In accordance with the provisions of this convention:

- a. a sentence imposed in one state party upon a national of another state party may be served by the sentenced person in the state of which he or she is a national; and
- b. the states parties undertake to afford each other the fullest cooperation in connection with the transfer of sentenced persons.

ARTICLE III - CONDITIONS FOR THE APPLICATION OF THIS CONVENTION

This convention shall be applicable only under the following conditions:

1. The sentence must be final, as defined in Article I.3 of this convention.
2. The sentenced person must consent to the transfer, having been previously informed of the legal consequences thereof.
3. The act for which the person has been sentenced must also constitutes a crime in the receiving state. For this purpose, no account shall be taken of differences of terminology or of those that have no bearing on the nature of the offense.
4. The sentenced person must be a national of the receiving state.
5. The sentence to be served must not be the death penalty.
6. At least six months of the sentence must remain to be served at the time the request is made.
7. The administration of the sentence must not be contrary to domestic law in the receiving state.

ARTICLE IV - PROVISION OF INFORMATION

1. Each state party shall inform any sentenced person covered by the provisions of this convention as to its content.
2. The states parties shall keep the sentenced person informed as to the processing of the transfer.

ARTICLE V - PROCEDURE FOR TRANSFER

The transfer of a sentenced person from one state to another shall be subject to the following procedure:

1. The request for application of this convention may be made by the sentencing state, the receiving state, or the sentenced person. The procedures for the transfer may be initiated by the sentencing state or by the receiving state. In these cases, it is required that the sentenced person has expressed consent to the transfer.
2. The request for transfer shall be processed through the central authorities indicated pursuant to Article XI of this convention, or, in the absence thereof, through consular or diplomatic channels. In conformity with its domestic law, each state party shall inform those authorities it considers necessary as to the content of this convention. It shall also endeavor to establish mechanisms for cooperation among the central authority and the other authorities that are to participate in the transfer of the sentenced person.
3. If the sentence was handed down by a state or province with criminal jurisdiction independent from that of the federal government, the approval of the authorities of that state or province shall be required for the application of this transfer procedure.
4. The request for transfer shall furnish pertinent information establishing that the conditions of Article III have been met.
5. Before the transfer is made, the sentencing state shall permit the receiving state to verify, if it wishes, through an official designated by the latter, that the sentenced person has given consent to the transfer in full knowledge of the legal consequences thereof.
6. In taking a decision on the transfer of a sentenced person, the states parties may consider, among other factors, the possibility of contributing to the person's social rehabilitation; the gravity of the offense; the criminal record of the sentenced person, if any; the state of health of the sentenced person; and the family, social, or other ties the sentenced person may have in the sentencing state and the receiving state.
7. The sentencing state shall provide the receiving state with a certified copy of the sentence, including information on the amount of time already served by the sentenced person and on the time off that could be credited for reasons such as work, good behavior, or pre trial detention. The receiving state may request such other information as it deems necessary.
8. Surrender of the sentenced person by the sentencing state to the receiving state shall be effected at the place agreed upon by the central authorities. The receiving state shall be responsible for custody of the sentenced person from the moment of delivery.

9. All expenses that arise in connection with the transfer of the sentenced person until that person is placed in the custody of the receiving state shall be borne by the sentencing state.
10. The receiving state shall be responsible for all expenses arising from the transfer of the sentenced person as of the moment that person is placed in the receiving state's custody.

ARTICLE VI - REFUSAL OF TRANSFER REQUEST

When a state party does not approve the transfer of a sentenced person, it shall notify the requesting state of its refusal immediately, and whenever possible and appropriate, explain its reasons for the refusal.

ARTICLE VII - RIGHTS OF THE SENTENCED PERSON WHO IS TRANSFERRED AND MANNER OF SERVING SENTENCE

1. A sentenced person who is transferred under the provisions of this convention shall not be arrested, tried, or sentenced again in the receiving state for the same offense upon which the sentence to be executed is based.
2. Except as provided in Article VIII of this convention, the sentence of a sentenced person who is transferred shall be served in accordance with the laws and procedures of the receiving state, including application of any provisions relating to reduction of time of imprisonment or of alternative service of the sentence.

No sentence may be enforced by a receiving state in such fashion as to lengthen the sentence beyond the date on which it would expire under the terms of the sentence of the court in the sentencing state.

3. The authorities of a sentencing state may request, by way of the central authorities, reports on the status of service of the sentence of any sentenced person transferred to a receiving state in accordance with this convention.

ARTICLE VIII - REVIEW OF SENTENCE AND EFFECTS IN THE RECEIVING STATE

The sentencing state shall retain full jurisdiction for the review of sentences issued by its courts. It shall also retain the power to grant pardon, amnesty, or mercy to the sentenced person. The receiving state, upon receiving notice of any decision in this regard, must take the corresponding measures immediately.

**ARTICLE IX - APPLICATION OF THE CONVENTION
IN SPECIAL CASES**

This Convention may also be applicable to persons subject to supervision or other measures under the laws of one of the states parties relating to youthful offenders. Consent for the transfer shall be obtained from the person legally authorized to grant it.

By agreement between the parties, this convention may be applied to persons whom the competent authority has pronounced unindictable, for purposes of treatment of such persons in the receiving state. The parties shall, in accordance with their laws, agree on the type of treatment to be accorded such individuals upon transfer. For the transfer, consent must be obtained from a person legally authorized to grant it.

ARTICLE X - TRANSIT

If the sentenced person, upon being transferred, must cross the territory of a another state party to this convention, the latter shall be notified by way of transmittal of the decision granting the transfer by the state under whose custody the transfer is to be effected. In such cases, the state of transit may or may not consent to the transit of the sentenced person through its territory.

Such notification shall not be necessary when air transport is used and no regular landing is scheduled in the territory of the state party that is to be overflown.

ARTICLE XI - CENTRAL AUTHORITY

Upon signing, ratifying, or acceding to this convention, the states parties shall notify the General Secretariat of the Organization of American States of the central authority designated to perform the functions provided herein. The General Secretariat shall distribute to the states parties to this convention a list of the designations it has received.

ARTICLE XII - RELATIONSHIP TO OTHER AGREEMENTS

None of the stipulations of this convention shall be construed to restrict other bilateral or multilateral treaties or other agreements between the parties.

FINAL CLAUSES

ARTICLE XIII

This convention is open to signature by the Member states of the Organization of American States.

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ARTICLE XIV

This convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

ARTICLE XV

This convention shall remain open to accession by any other state. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

ARTICLE XVI

The States may set forth reservations to this convention at such time as they approve, sign, ratify, or accede to it, provided that the reservations are not incompatible with the object and purpose of this convention and that they relate to one or more specific provisions.

ARTICLE XVII

This convention shall enter into force for the ratifying states on the thirtieth day following the date on which the second instrument of ratification has been deposited.

For each state that ratifies the convention or accedes to it after the second instrument of ratification has been deposited, the convention shall enter into force on the thirtieth day following the day on which such states has deposited its instrument of ratification or accession.

ARTICLE XVIII

This convention shall remain in force indefinitely, but any state party may denounce it. The denunciation shall be registered with the General Secretariat of the Organization of American States. At the end of one year from the date of the denunciation, the convention shall cease to be in force for the denouncing state.

However, its provisions shall remain in force for the denouncing state with respect to sentenced persons transferred in accordance with this convention, until the respective sentences have been served.

Requests for transfer being processed at the time the denunciation of this convention is made will continue to be processed and executed, unless the parties agree to the contrary.

ARTICLE XIX

The original of this convention, whose texts in English, French, Portuguese, and Spanish are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall send a certified copy, for registry and publication, to the Secretariat of the United Nations, pursuant to Article 102 of the United Nations Charter. The General Secretariat of the Organization of American States shall notify the Member states of that Organization and the states that have acceded to the convention of the signatures affixed, the instruments of ratification, accession, or denunciation deposited, and the reservations set forth, if any.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto by their respective governments, have signed this Convention, which shall be called the "Inter-American Convention on Serving Criminal Sentences Abroad".

DONE IN THE CITY OF MANAGUA, NICARAGUA, the ninth of June in the year one thousand nine hundred ninety-three

ORGANIZATION OF AMERICAN STATES
WASHINGTON, D. C.

GENERAL SECRETARIAT

Certifico que el documento preinserto es copia fiel y exacta de los textos auténticos en español, inglés, portugués y francés de la Convención Interamericana para el Cumplimiento de Condenas Penales en el Extranjero, suscrita en Managua, Nicaragua, el 9 de junio de 1993, en el vigésimo tercer período ordinario de sesiones de la Asamblea General de la Organización de los Estados Americanos, y que los textos firmados de dichos originales se encuentran depositados en la Secretaría General de la Organización de los Estados Americanos.

26 de marzo de 1996

I hereby certify that the foregoing document is a true and faithful copy of the authentic texts in Spanish, English, Portuguese and French of the Inter-American Convention on Serving Criminal Sentences Abroad, signed at Managua, Nicaragua, on June 9, 1993, at the Twenty-third Regular Session of the General Assembly of the Organization of American States, and that the signed originals of these texts are on deposit with the General Secretariat of the Organization of American States.

March 26, 1996

Certifico que o documento transcrito é cópia fiel e exata dos textos autênticos em espanhol, inglês, português e francês da Convenção Interamericana sobre o Cumprimento de Sentenças Penais no Exterior, assinado em Manágua, Nicarágua, em 9 de junho de 1993, no Vigésimo Terceiro Período Ordinário de Sessões da Assembléia Geral, e que os textos originais assinados encontram-se depositados na Secretaria-Geral da Organização dos Estados Americanos.

26 de março de 1996

Je certifie que le document qui précède est une copie fidèle et conforme aux textes authentiques français, anglais, espagnol, et portugais de la Convention interaméricaine sur l'exécution des décisions pénales à l'étranger, signée à Managua, Nicaragua, le 9 juin 1993, lors de la vingt-troisième Session ordinaire de l'Assemblée générale, et que des originaux signés de ces textes sont déposés auprès du Secrétariat général de l'Organisation des Etats Américains.

26 mars 1996

Por el Secretario General
For the Secretary General
Pelo Secretário-Geral
Pour le Secrétaire général


William M. Berenson

Subsecretario de Asuntos
Jurídicos Interino

Acting Assistant Secretary
for Legal Affairs

Sub-Secretário Interino
de Assuntos Jurídicos

Sous-secrétaire intérimaire pour
les questions juridiques

District of Columbia

Subscribed and sworn to by

25 Feb

March 1996

Maria Cristina

My Commission expires _____

ORGANIZATION OF AMERICAN STATES
WASHINGTON, D. C.

GENERAL SECRETARIAT

PROCÈS-VERBAL OF THE SIGNATURE BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA OF THE INTER-AMERICAN CONVENTION ON SERVING CRIMINAL SENTENCES ABROAD, DONE AT MANAGUA, NICARAGUA, ON JUNE 9, 1993.

The undersigned, Her Excellency Mrs. Harriett C. Babbitt, Ambassador, Permanent Representative of the United States of America and His Excellency Mr. César Gaviria, Secretary General of the Organization of American States, have this day met together at the Secretariat of the OAS for the purpose of proceeding to the signing by the Government of the United States of America of the Inter-American Convention on Serving Criminal Sentences Abroad, done at Managua, Nicaragua, on June 9, 1993, at the Twenty-Third Regular Session of the General Assembly of the Organization of American States.

IN WITNESS WHEREOF, the undersigned have affixed their signatures to the present procès-verbal in Washington, D.C., in duplicate originals, this tenth day of January in the year nineteen hundred ninety-five.



Harriett C. Babbitt

Harriett C. Babbitt
Ambassador, Permanent Representative of
the United States of America to the
Organization of American States

César Gaviria

César Gaviria
Secretary General
Organization of American States