



Treaty Series No. 36 (2003)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the Republic of Cuba on

the Transfer of Prisoners

Havana, 13 June 2002

[The Agreement entered into force on 2 July 2003]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
September 2003*

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**AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF
THE REPUBLIC OF CUBA ON THE TRANSFER OF PRISONERS**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Cuba (hereinafter called “the Parties”),

Desiring to develop co-operation in the field of criminal law,

Being of the view that the objective of imposing penalties is the social rehabilitation of the persons on whom they are imposed,

Considering that the objective requires that foreigners who are deprived of their liberty by virtue of a sentence imposed at criminal law must have the opportunity to serve their sentences in their country of origin in order better to be able to become reintegrated into society,

Considering that the transfer of sentenced persons to their country of origin so that they may serve their sentences there is an appropriate means of attaining that objective,

Have agreed as follows:

ARTICLE 1

Definitions

- (1) For the purpose of this agreement:
- (a) “sentencing State” means the State in which the sentenced person who may be transferred was sentenced;
 - (b) “administering State” means the State to which the sentenced person may be transferred;
 - (c) “sentenced person” means the person on whom a penalty or security measure has been imposed in the sentencing State on account of an offence;
 - (d) “sentence” means any judicial decision involving a penalty or security measure consisting of the deprivation of liberty.

ARTICLE 2

General Principles

- (1) A person sentenced in the territory of one Party may be transferred to the territory of the other Party, in accordance with the Provisions of this Agreement, in order that he may complete his sentence there. To that end, he may express an interest to the sentencing State or to the administering State in being transferred under this Agreement.
- (2) Transfer may be requested by either the sentencing State or the administering State.

ARTICLE 3

Requests and Replies

- (1) Requests for transfer and replies thereto shall be made in writing.
- (2) Each Party shall designate an authority to whom requests for transfer should be addressed, to be in charge of fulfilling the responsibilities set out in the present Agreement.
- (3) Any decision to transfer a sentenced person will take into account all the relevant factors and the probability of the transfer itself contributing to the social rehabilitation of the person, including the nature and seriousness of the offence and any previous convictions (or pending criminal proceedings); the conditions of his health, age, residency links, presence in the territory, family ties or other links he might have with the social life of the administering State.
- (4) Decisions taken by a State under this Agreement shall be notified to the other State without delay and need not state the grounds on which they are based.

ARTICLE 4

Conditions of Transfer

This Agreement shall apply only in accordance with the following conditions:

- (1) the acts or omissions on account of which the sentence was imposed must also be punishable in the administering State, even though the classification may not be the same;
- (2) the sentenced person is a national and is ordinarily resident in the administering State at the time of the request for transfer;
- (3) the sentence is final and no legal proceedings relating to the offence or any other offence are pending in the sentencing State;
- (4) the sentenced person consents to the transfer or, if he is incapable of doing this in view of his/her age, physical or mental condition, consent is given by his/her legal representative;
- (5) at the time of receipt of the request for transfer by either Party, at least six months of the sentence remains to be served. In exceptional cases, the Parties may agree to allow a request even though the time left to be served of the sentence is less than that specified;
- (6) the sentenced person has paid all financial penalties, legal and reparations costs of whatever nature as required by the sentence imposed on him;
- (7) transfer of the sentenced person shall depend on agreement between the sentencing State and the administering State.

ARTICLE 5

Obligation to Furnish Information

- (1) The competent authorities of both Parties shall notify every sentenced person who is a national of the other Party about the possibility for transfer which this Agreement offers and about the judicial consequences which may derive from the transfer.
- (2) If the sentenced person has expressed interest to the competent authorities of the sentencing State in being transferred in accordance with this Agreement, the sentencing State shall inform the other Party as soon as possible.
- (3) The following must be provided:
 - (a) name, date and place of birth of the sentenced person;
 - (b) his address, if any, in the administering State;
 - (c) an account of the facts on which the sentence is based;
 - (d) the nature, duration and date of commencement of the sentence.
- (4) If the sentenced person has expressed to the administering State his interest in being transferred, the sentencing State shall provide, at the request of the other Party, the information referred to in paragraph (3) of this Article.
- (5) The sentenced person shall be informed in writing of the outcome of any decision made in relation to his request.

ARTICLE 6

Documentation

- (1) The administering State shall send the following with the request for transfer:
 - (a) a document which testifies that the sentenced person is a national of the said State;
 - (b) a copy of the legal provisions where the acts or omissions which have resulted in the sentence constitute an offence according to the law of the administering State;
 - (c) Information on what is foreseen in paragraph (3) of Article 3 (for example, any legislation about the possible arrest of the sentenced person in the administering State after his transfer or a statement about the effects of such an arrest on the sentenced person).
- (2) The sentencing State shall send the following with its request for transfer:
 - (a) a certified copy of the judgement, making clear that it is final;
 - (b) a copy of the legal provisions applied;
 - (c) indication of the duration of the sentence, the time already served and the time remaining;
 - (d) a document which clearly shows the consent of the sentenced person to be transferred;
 - (e) any additional information which may be useful to the authorities of the administering State in determining how the sentenced person should be treated with a view to his social rehabilitation.
- (3) Either of the Parties may, before formulating a request for transfer, seek from the other Party the documents and information referred to in paragraphs (1) and (2) of this Article.

ARTICLE 7

Consent and Verification

- (1) The sentenced person's wish to be transferred should be clearly expressed. The sentencing State must allow the administering State, if it asks, to confirm that the sentenced person is aware of the legal consequences of the transfer and that he has consented of his own free will via a Consul or other Official agreed upon with the administering State.
- (2) The manner of expression of consent will be determined by the law of the sentencing State.

ARTICLE 8

Effects of Transfer

- (1) The taking into charge of the prisoner by the authorities of the administering State shall have the effect of suspending the enforcement of the sentence in the sentencing State.
- (2) The sentencing State may no longer enforce the sentence if the administering State considers enforcement of the sentence to have been completed.
- (3) The administering State may not convert the sentence into a financial penalty.

ARTICLE 9

Review of Sentencing

- (1) The sentencing State shall retain exclusive jurisdiction over any procedure, of whatever nature, aimed at reviewing the sentence.
- (2) The administering State shall be bound by the legal nature and duration of the sentence as determined by the sentencing state. If, however, the sentence is by nature or duration incompatible with the law of the administering State, the State may adapt the sentence to the punishment or measure prescribed by its own law for a similar offence. It shall not, however, aggravate, by its nature or duration, the sanction imposed in the sentencing State, nor exceed the maximum prescribed by the law of the administering State.
- (3) If the sentencing State revises, modifies or overturns the sentence pursuant to paragraph (1) of this Article, or otherwise reduces, commutes or terminates the sentence, the administering State will, upon being notified of the decision, give effect thereto in accordance with this paragraph.

ARTICLE 10

Non bis in idem

A sentenced person who has been handed over to serve a sentence in accordance with this Agreement may not be detained, prosecuted or sentenced in the administering State for the same offences as those on account of which he was sentenced.

ARTICLE 11

Costs

- (1) The handing over of the sentenced person by the sentencing State's authorities to the authorities of the administering State shall be effected at a place and on a date agreed by the parties.
- (2) The administering State shall bear the costs of transfer from the point at which the sentenced person enters its custody. The administering State may, however, seek to recover all or part of the costs of the transfer from the prisoner or from some other source.

ARTICLE 12

Information Concerning Enforcement

The administering State shall inform the sentencing State:

- (a) when the sentence has been served;
- (b) if the sentenced person escapes from custody;
- (c) of anything in connection with this Agreement which the sentencing State seeks to ascertain.

ARTICLE 13

Temporal Application

This Agreement shall be applicable to the enforcement of sentences imposed prior to or after its entry into force.

ARTICLE 14

Territorial Application

This Agreement shall apply:

- (a) in relation to the Republic of Cuba, its territory, in accordance with its legislation;
- (b) in relation to the United Kingdom, to Great Britain, Northern Ireland and the Isle of Man; and to any other territory for the international relations of which the United Kingdom is responsible and to which the Agreement shall have been extended by mutual agreement between the Parties by exchange of notes.

ARTICLE 15

Final Provisions

- (1) The present Agreement will enter into force on the date of the latest notification exchanged by the Parties in writing and through the diplomatic channel, conveying the fulfilment of their respective constitutional procedures.
- (2) It shall be of the indefinite duration and either Party may denounce it by giving written notice through the diplomatic channel. Denunciation shall be effective as from the last day of the sixth month following the said notification.

(3) Notwithstanding any denunciation, this Agreement shall continue to apply to the enforcement of sentences of prisoners who have been transferred under this Agreement before the date on which such a denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Havana on the 13 day of June 2002, in the English and Spanish languages, each text being equally authentic.

For the Government of the United
Kingdom of Great Britain and
Northern Ireland

VALERIE AMOS

For the Government of the Republic of
Cuba

ROBERTO DÍAZ SOTOLONGO



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