

▼ Vote Agreement
on the United Nations
at the Department of Justice
on the United Nations

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Introduction

The Model Agreement on the Transfer of Foreign Prisoners emanated from the deliberations of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, Italy, from 26 August to 6 September 1985. The Model Agreement is intended to assist Member States in the development of similar bilateral and multilateral arrangements in order to facilitate the return of foreign prisoners to their home countries to serve their sentence.

In adopting the Model Agreement, the Congress invited Member States to take its provisions into account, whenever establishing treaty relations or revising existing arrangements in this area. It also requested the United Nations Secretary-General to assist Member States, at their request, in the development of agreements on the transfer of foreign prisoners and to report regularly thereon to the United Nations Committee on Crime Prevention and Control.

The recommendations on the treatment of foreign prisoners, also adopted by the Milan Congress, effectively complement the Model Agreement. They contain practical guidelines to cope with the difficulties faced by foreigners detained in prisons abroad, owing to such factors as differences in language, culture, customs and religion.

The conclusions of the Milan Congress were endorsed by the General Assembly by its resolution 40/32 of 29 November 1985.

The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling resolution 13 adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in which States Members of the United Nations were urged to consider the establishment of procedures whereby transfers of offenders might be effected,

Recognizing the difficulties of foreigners detained in prison establishments abroad owing to such factors as differences in language, culture, customs and religion,

Considering that the aim of social resettlement of offenders could best be achieved by giving foreign prisoners the opportunity to serve their sentence within their country of nationality or residence,

Convinced that the establishment of procedures for the transfer of prisoners, on either a bilateral or a multilateral basis, would be highly desirable,

Taking note of the existing multilateral and bilateral international agreements on the transfer of foreign prisoners,

1. *Adopts* the Model Agreement on the Transfer of Foreign Prisoners contained in Annex I to the present resolution;

2. *Approves* the recommendations on the treatment of foreign prisoners contained in Annex II below;

3. *Invites* Member States, if they have not yet established treaty relations with other Member States in the matter of the transfer of foreign prisoners to their own countries, or if they wish to revise existing treaty relations, to take into account, whenever doing so, the Model Agreement on the Transfer of Foreign Prisoners annexed hereto;

4. *Requests* the Secretary-General to assist Member States, at their request, in the development of agreements on the transfer of foreign prisoners and to report regularly thereon to the Committee on Crime Prevention and Control.

Annex I

Model Agreement on the Transfer of Foreign Prisoners

Preamble

The _____ and the _____
Desirous of further developing mutual co-operation in the field of criminal justice,
Believing that such co-operation should further the ends of justice and the social resettlement of sentenced persons,
Considering that those objectives require that foreigners who are deprived of their liberty as the result of a criminal offence should be given the opportunity to serve their sentences within their own society,
Convinced that this aim can best be achieved by transferring foreign prisoners to their own countries,
Bearing in mind that the full respect for human rights, as laid down in universally recognized principles, should be ensured,
Have agreed on the following:

I. General Principles

1. The social resettlement of offenders should be promoted by facilitating the return of persons convicted of crime abroad to their country of nationality or of residence to serve their sentence at the earliest possible stage. In accordance with the above, States should afford each other the widest measure of co-operation.
2. A transfer of prisoners should be effected on the basis of mutual respect for national sovereignty and jurisdiction.
3. A transfer of prisoners should be effected in cases where the offence giving rise to conviction is punishable by deprivation of liberty by the judicial authorities of both the sending (sentencing) State and the State to which the transfer is to be effected (administering State) according to their national laws.

4. A transfer may be requested by either the sentencing or the administering State. The prisoner, as well as close relatives, may express to either State their interest in the transfer. To that end, the contracting State shall inform the prisoner of their competent authorities.

5. A transfer shall be dependent on the agreement of both the sentencing and the administering State, and should also be based on the consent of the prisoner.

6. The prisoner shall be fully informed of the possibility and of the legal consequences of a transfer, in particular whether or not he might be prosecuted because of other offences committed before his transfer.

7. The administering State should be given the opportunity to verify the free consent of the prisoner.

8. Any regulation concerning the transfer of prisoners shall be applicable to sentences of imprisonment as well as to sentences imposing measures involving deprivation of liberty because of the commission of a criminal act.

9. In cases of the person's incapability of freely determining his will, his legal representative shall be competent to consent to the transfer.

II. Other Requirements

10. A transfer shall be made only on the basis of a final and definitive sentence having executive force.

11. At the time of the request for a transfer, the prisoner shall, as a general rule, still have to serve at least six months of the sentence; a transfer should, however, be granted also in cases of indeterminate sentences.

12. The decision whether to transfer a prisoner shall be taken without any delay.

13. The person transferred for the enforcement of a sentence passed in the sentencing State may not be tried again in the administering State for the same act upon which the sentence to be executed is based.

III. Procedural Regulations

14. The competent authorities of the administering State shall: (a) continue the enforcement of the sentence immediately or through a court or administrative order; or (b) convert the sentence, thereby substituting for the sanction imposed in the sentencing State a sanction prescribed by the law of the administering State for a corresponding offence.

15. In the case of continued enforcement, the administering State shall be bound by the legal nature and duration of the sentence as determined by the sentencing State. If, however, this sentence is by its nature or duration incompatible with the law of the administering State, this State may adapt the sanction to the punishment or measure prescribed by its own law for a corresponding offence.

16. In the case of conversion of sentence, the administering State shall be entitled to adapt the sanction as to its nature or duration according to its national law, taking into due consideration the sentence passed in the sentencing State. A sanction involving deprivation of liberty shall, however, not be converted to a pecuniary sanction.

17. The administering State shall be bound by the findings as to the facts in so far as they appear from the judgement imposed in the sentencing State. Thus the sentencing State has the sole competence for a review of the sentence.

18. The period of deprivation of liberty already served by the sentenced person in either State shall be fully deducted from the final sentence.

19. A transfer shall in no case lead to an aggravation of the situation of the prisoner.

20. Any costs incurred because of a transfer and related to transportation should be borne by the administering State, unless otherwise decided by both the sentencing and administering States.

IV. Enforcement and Pardon

21. The enforcement of the sentence shall be governed by the law of the administering State.

22. Both the sentencing and the administering State shall be competent to grant pardon and amnesty.

V. Final Clauses

23. This agreement shall be applicable to the enforcement of sentences imposed either before or after its entry into force.

24. This agreement is subject to ratification. The instruments of ratification shall be deposited as soon as possible in _____.

25. This agreement shall enter into force on the thirtieth day after the day on which the instruments of ratification are exchanged.

26. Either Contracting Party may denounce this agreement in writing to the _____. Denunciation shall take effect six months following the date on which the notification is received by the _____.

In witness whereof the undersigned, being duly authorized thereto by the respective Governments, have signed this treaty.

Annex II

Recommendations on the treatment of foreign prisoners

1. The allocation of a foreign prisoner to a prison establishment should not be effected on the grounds of his nationality alone.

2. Foreign prisoners should have the same access as national prisoners to education, work and vocational training.

3. Foreign prisoners should in principle be eligible for measures alternative to imprisonment, as well as for prison leave and other authorized exits from prison according to the same principles as nationals.

4. Foreign prisoners should be informed promptly after reception into a prison, in a language which they understand and generally in writing, of the main features of the prison regime, including relevant rules and regulations.

5. The religious precepts and customs of foreign prisoners should be respected.

6. Foreign prisoners should be informed without delay of their right to request contacts with their consular authorities, as well as of any other relevant information regarding their status. If a foreign prisoner wishes to receive assistance from a diplomatic or consular authority, the latter should be contacted promptly.

7. Foreign prisoners should be given proper assistance, in a language they can understand, when dealing with medical or programme staff and in such matters as complaints, special accommodation, special diets and religious representation and counselling.

8. Contacts of foreign prisoners with families and community agencies should be facilitated, by providing all necessary opportunities for visits and correspondence, with the consent of the prisoner. Humanitarian international organizations, such as the International Committee of the Red Cross, should be given the opportunity to assist foreign prisoners.

9. The conclusion of bilateral and multilateral agreements on supervision of and assistance to offenders given suspended sentences or granted parole could further contribute to the solution of the problems faced by foreign offenders.

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