

United Nations
Nations Unies



International
Criminal Tribunal
for the former Yugoslavia

Tribunal
Pénal International
pour l'ex-Yougoslavie

**AGREEMENT BETWEEN
THE UNITED NATIONS
AND
THE KINGDOM OF SPAIN
ON THE ENFORCEMENT OF SENTENCES
OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR
THE FORMER YUGOSLAVIA**

The United Nations, acting through the International Criminal Tribunal for the former Yugoslavia, hereinafter called "the International Tribunal", and

The Kingdom of Spain, hereinafter called "Spain",

RECALLING Article 27 of the Statute of the International Tribunal adopted by Security Council resolution 827 (1993) of 25 May 1993, according to which imprisonment of persons sentenced by the International Tribunal shall be served in a State designated by the International Tribunal from a list of States which have indicated to the Security Council their willingness to accept convicted persons;

TAKING INTO CONSIDERATION the declaration made by Spain in accordance with the said Article 27 and with Spanish national law by which it declares its willingness to accept persons convicted by the International Tribunal in order to enforce the imprisonment sentences;

RECALLING the provisions of the Standard Minimum Rules for the Treatment of Prisoners approved by ECOSOC resolutions 663 C(XXIV) of 31 July 1957 and 2067 (LXII) of 13 May 1977, the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment adopted by General Assembly resolution 43/173 of 9 December 1988, and the Basic Principles for the Treatment of Prisoners adopted by General Assembly resolution 45/111 of 14 December 1990;

IN ORDER to give effect to the judgements and sentences of the International Tribunal;

HAVE AGREED as follows:

Article 1

Purpose and scope of the Agreement

This Agreement shall regulate matters relating to or arising out of all requests to Spain to enforce sentences imposed by the International Tribunal.

Article 2

Procedure

1. A request to Spain to enforce a sentence shall be made by the Registrar of the International Tribunal (hereinafter: "the Registrar"), with the approval of the President of the International Tribunal.
2. The Registrar shall provide the following documents to Spain when making the request:
 - a) a certified copy of the judgement;
 - b) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention;
 - c) when appropriate, any medical or psychological reports on the convicted person, any recommendation for his or her further treatment in Spain and any other factor relevant to the enforcement of the sentence.
3. The central authority in Spain competent to receive the requests of the Registrar referred to in paragraph 1 of the Article is the Ministry of Justice (Secretaria General Técnica, c/ San Bernardo 62, Madrid). The Ministry of Justice shall promptly inform the Registrar of the decision adopted regarding the request, in accordance with Spanish national law.

Article 3

Enforcement

1. In enforcing the sentence pronounced by the International Tribunal, the competent national authorities of Spain shall be bound by the duration of the sentence.
2. Spain will only consider the enforcement of sentences pronounced by the International Tribunal where the duration of the sentence imposed by the International Tribunal does not exceed the highest maximum sentence for any crime under Spanish law.
3. The conditions of imprisonment shall be governed by Spanish law, subject to the supervision of the International Tribunal, as provided for herein.
4. If, pursuant to the applicable Spanish national law, the convicted person is eligible for early release, Spain shall notify the Registrar accordingly.

5. The President of the International Tribunal shall determine, in consultation with the Judges of the International Tribunal, whether any early release is appropriate. The Registrar shall inform Spain of the President's determination. If the President determines that an early release is not appropriate, further enforcement of the sentence in Spain will not be possible, and the Registrar will have to make the appropriate arrangements for the transfer of the convicted person in accordance with Article 10.

6. The conditions of imprisonment shall be compatible with the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment and the Basic Principles for the Treatment of Prisoners.

Article 4

Monitoring of the conditions of imprisonment

1. In order to provide for monitoring of the conditions of detention and treatment given to those persons transferred in accordance with this Agreement, a Parity Commission, composed of two representatives of the International Tribunal and two representatives of Spain, shall be established. This Commission will conduct inspections of the relevant prison facilities and will study and evaluate any possible measures that may affect the situation of imprisonment of the convicted persons.

2. Inspections by the Parity Commission will take place upon the request, and at a time to be stipulated by, any two members of the Commission. The Parity Commission will present reports and make recommendations on the conditions of detention and treatment of the prisoners.

3. Without prejudice to the right of the members of the Parity Commission to transmit their findings to their respective authorities, the reports of the Parity Commission will be submitted to the President of the International Tribunal and to the Ministry of Justice of Spain, who will consult each other on the conclusions of the reports. The President of the International Tribunal may thereafter request Spain to report to him or her on any changes in the conditions of detention suggested by the Parity Commission.

4. The members of the Parity Commission will be appointed for each case by Spain and by the International Tribunal in the shortest possible time after the acceptance by Spain of the first request for transfer made by the International Tribunal.

5. The Parity Commission will meet periodically, but no less than once per year.

Article 5

Transfer of the convicted person

The Registrar shall make appropriate arrangements for the transfer of the convicted person from the International Tribunal to the competent authorities of Spain. Prior to his or her transfer, the convicted person will be informed by the Registrar of the contents of this Agreement.

Article 6

Non-bis-in-idem

The convicted person shall not be tried before a court of Spain for acts constituting serious violations of international humanitarian law under the Statute of the International Tribunal, for which he or she has already been tried by the International Tribunal.

Article 7

Information

1. Spain shall immediately notify the Registrar:
 - a) two months prior to the completion of the sentence;
 - b) if the convicted person has escaped from custody before the sentence has been completed;
 - c) if the convicted person has deceased.
2. Notwithstanding the previous paragraph, the Registrar and Spain shall consult each other on all matters relating to the enforcement of the sentence upon the request of either party.

Article 8

Pardon and commutation of sentences

1. If, pursuant to the applicable Spanish national law, the convicted person is eligible for pardon or commutation of the sentence, Spain shall notify the Registrar accordingly.

2. The President of the International Tribunal shall determine, in consultation with the Judges of the International Tribunal, whether pardon or commutation of the sentence is appropriate. The Registrar shall inform Spain of the President's determination. If the President determines that a pardon or commutation of the sentence is not appropriate, further enforcement of the sentence in Spain will not be possible, and the Registrar will have to make the appropriate arrangements for the transfer of the convicted person in accordance with Article 10.

Article 9

Termination of enforcement

1. The enforcement of the sentence shall cease:
 - a) when the sentence has been completed;
 - b) upon the demise of the convicted;
 - c) upon the pardon of the convicted;
 - d) following a decision of the International Tribunal as referred to in paragraph 2.
2. The International Tribunal may at any time decide to request the termination of the enforcement in Spain and transfer the convicted person to another state or to the International Tribunal.
3. The competent authorities of Spain shall terminate the enforcement of the sentence as soon as it is informed by the Registrar of any decision or measure as a result of which the sentence ceases to be enforceable.

Article 10

Impossibility to enforce sentence

If, at any time after the decision has been taken to enforce the sentence, for any legal or practical reasons, further enforcement has become impossible, Spain shall promptly inform the Registrar. The Registrar shall make the appropriate arrangements for the transfer of the convicted person. The competent authorities of Spain shall allow for a maximum of ninety days following the notification of the Registrar before taking other measures on the matter.

Article 11

Costs

Unless the parties to this Agreement agree otherwise, the International Tribunal shall bear the expenses related to the transfer of the convicted person to and from Spain, and Spain shall pay all other expenses incurred by the enforcement of the sentence.

Article 12

Entry into force

This Agreement shall enter into force upon receipt of notification by Spain that the necessary national legal requirements have been met.

Article 13

Duration of the Agreement

1. This Agreement shall remain in force until such time as either party, upon consultation with the other party, may terminate this Agreement, with two months' prior notice.
2. If sentences of the International Tribunal are still being enforced by Spain under the terms of this Agreement when the Agreement is terminated, the convicted persons shall be transferred in accordance with Article 10. Until such time as such transfers have taken place, this Agreement shall continue to apply with regard to the convicted persons concerned.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Agreement.

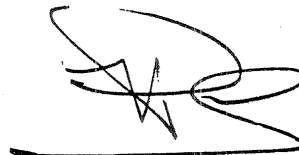
Done at The Hague this twenty-eighth day of March 2000, in duplicate, in Spanish and English, both being equally authoritative.

FOR THE UNITED NATIONS



Dorothee de Sampayo Garrido-Nijgh
Registrar
International Criminal Tribunal
for the former Yugoslavia

FOR THE KINGDOM OF SPAIN



José María Pons Irazazábal
Ambassador of Spain in The Hague