

**AGREEMENT BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF POLAND
AND
THE UNITED NATIONS
ON THE ENFORCEMENT OF SENTENCES
OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER
YUGOSLAVIA**

The Government of the Republic of Poland, (for the purposes of this Agreement hereinafter called the “requested State”), and

The United Nations, acting through the International Criminal Tribunal for the former Yugoslavia, hereinafter called “the International Tribunal”,

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;

NOTING the willingness of the requested State to enforce sentences imposed by the International Tribunal;

RECALLING the provisions of the Standard Minimum Rules for the Treatment of Prisoners approved by Economic and Social Council 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 sentences of the International Tribunal;

HAVE AGREED as follows:

Article 1

Purpose and Scope of the Agreement

1. This Agreement shall regulate matters relating to all requests to the requested State to enforce sentences imposed by the International Tribunal.
2. A sentenced person may be transferred under this Agreement if the requested State and the International Tribunal agree to the transfer.

Article 2

Procedure

1. A request to the Government of the Republic of Poland 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 the Minister of Justice of the requested State 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 the requested State and any other factor relevant to the enforcement of the sentence.
3. The Minister of Justice of the requested State shall submit the request to the competent national authorities, in accordance with the national law of the requested State.
4. The competent national authorities of the requested State shall promptly decide upon the request of the Registrar, in accordance with national law.

Article 3

Enforcement

1. In enforcing the sentence pronounced by the International Tribunal, the competent national authorities of the requested State shall be bound by the duration of the sentence.
2. The enforcement of sentences imposed by the International Tribunal shall be possible also when the convicted person is not a Polish national and not permanently residing within the territory of the Republic of Poland or when he/she does not consent to the enforcement of the sentence in Poland.
3. In the event that the sentence pronounced by the International Tribunal exceeds the upper limit of the statutory penalty stipulated in the Polish law for the same kind of offence, the part of the sentence amounting to the upper limit of penalty envisaged for a given offence in the Polish domestic law shall be enforceable in Poland. The Minister of Justice of the requested State shall notify the Registrar, six months in advance, in writing, of the date of the completion of the part of the sentence enforceable in Poland; in that case Article 10 of this Agreement shall be applied accordingly.
4. The conditions of imprisonment shall be governed by the law of the requested State, subject to the supervision of the International Tribunal, as provided for in Articles 6 to 8 and paragraphs 2 and 3 of Article 9 below.
5. If, pursuant to the applicable national law of the requested State, the convicted person is eligible for early release, the Minister of Justice of the requested State shall notify the Registrar accordingly.

6. 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 the Minister of Justice of the requested State of the President's determination. If the President determines that an early release is not appropriate, the requested State shall act accordingly.

7. If, pursuant to the applicable national law of the requested State, the convicted person is eligible for a half-open or an open prison, paragraph 5 and 6 of this Article shall apply *mutatis mutandis*.

8. The conditions of imprisonment shall be equivalent to the conditions of imprisonment applicable to prisoners serving sentences pursuant to judgments of Polish courts and shall be compatible with the relevant international human rights standards.

Article 4

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 the requested State. Prior to his or her transfer, the convicted person will be informed by the Registrar of the contents of this Agreement.

Article 5

Non-bis-in-idem

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

Article 6

Inspection

1. The competent authorities of the requested State shall allow the inspection of the conditions of detention and treatment of the prisoner(s) by the International Committee of the Red Cross (ICRC) at any time and on a periodic basis, the frequency of visits to be determined by the ICRC. The ICRC will submit a confidential report based on the findings of these inspections to the requested State and to the President of the International Tribunal.

2. The requested State and the President of the International Tribunal shall consult each other on the findings of the reports referred to in paragraph 1. The President of the International Tribunal may thereafter request the requested State to report to him or her any changes in the conditions of detention suggested by the ICRC.

Article 7

Information

1. The Minister of Justice of the requested State 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 the requested State 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 national law of the requested State, the convicted person is eligible for pardon or commutation of the sentence, the Minister of Justice of the requested State 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 the Minister of Justice of the requested State of the President's determination. If the President determines that a pardon or commutation of the sentence is not appropriate, the requested State shall act accordingly.

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 the requested State and transfer the convicted person to another State or to the International Tribunal.

3. The competent authorities of the requested State 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, the Minister of Justice of the requested State shall promptly inform the Registrar. The Registrar shall make the appropriate arrangements for the transfer of the convicted person. The competent authorities of the requested State shall allow for at least sixty days following the notification of the Registrar before taking other measures on the matter.

Article 11

Costs

The International Tribunal shall bear the expenses related to the transfer of the convicted person to and from the requested State, unless the parties agree otherwise. The requested State shall pay all other expenses incurred by the enforcement of the sentence.

Article 12

Entry into force

This Agreement shall enter into force on the date the Republic of Poland has notified the United Nations of completion of the relevant internal procedures necessary for the entry into force of the Agreement.

Article 13

Duration of the Agreement

1. This Agreement shall remain in force as long as sentences of the International Tribunal are being enforced by the requested State under the terms and conditions of this Agreement.
2. Upon consultation, either party may terminate this Agreement, with two months prior notice. This Agreement shall not be terminated before the sentences to which this Agreement applies have been completed or terminated and, if applicable, before the transfer of the convicted as provided for in Article 10 has been effected.

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

Done at The Hague this eighteenth day of September, 2008, in duplicate, in Polish and English each, both texts being equally authoritative.

**FOR THE GOVERNMENT OF
THE REPUBLIC OF POLAND**

FOR THE UNITED NATIONS

Łukasz Rędziniak,
Under Secretary of State
in the Ministry of Justice
of the Republic of Poland

Hans Holthuis,
Registrar
International Criminal Tribunal
for the former Yugoslavia