

AGREEMENT BETWEEN THE UNITED NATIONS AND THE PORTUGUESE REPUBLIC 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 Portuguese Republic, hereinafter called "Portugal",

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 Portugal in accordance with the said Article 27 and with Portuguese national law by which it declares its willingness to accept persons convicted by the International Tribunal in order to enforce the imprisonment sentences;

TAKING INTO ACCOUNT the fact that Portugal has adopted a law that establishes norms on the cooperation between Portugal and the International Criminal Tribunals for the Former Yugoslavia and Rwanda (Law n.º 102/2001, of 25 August 2001);

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 Portugal to enforce sentences imposed by the International Tribunal.

Article 2

Procedure

1. A request to Portugal 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 Portugal 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 Portugal and any other factor relevant to the enforcement of the sentence.

3. The central authority in Portugal competent to receive the request of the Registrar referred to in paragraph 1 of this Article is the Attorney-General's Office (*Procuradoria-Geral da República*).

4. The Attorney-General's Office (*Procuradoria-Geral da República*) shall submit the request to the Minister of Justice, who shall decide on its admissibility.

5. The Attorney-General's Office (*Procuradoria-Geral da República*) shall promptly inform the Registrar of the decision adopted regarding the request, in accordance with Portuguese national law.

Article 3

Enforcement

1. In enforcing the sentence pronounced by the International Tribunal, the competent national authorities of Portugal shall be bound by the duration of the sentence.

2. Portugal will only enforce sentences pronounced by the International Tribunal where the duration of the sentence imposed by the International Tribunal does not exceed the highest maximum sentence at the time for any crime under Portuguese law.

3. The conditions of imprisonment shall be governed by Portuguese law, 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.

4. If, pursuant to the applicable national law of Portugal, the convicted person is eligible for early release, Portugal 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 Portugal of the President's determination. If the President determines that an early release is not appropriate, further enforcement of the sentence in Portugal will not be possible, and the Registrar will have to make 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, as well as with other relevant 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 Portugal. 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 Portugal 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 6

Monitoring of the conditions of imprisonment

1. The competent authorities of Portugal shall allow the inspection of the conditions of detention and treatment of the prisoner(s) by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter “CPT”) at any time and on a periodic basis, the frequency of visits to be determined by the CPT. The CPT will submit a confidential report based on the findings of these inspections to Portugal which will be responsible to forward it to the President of the International Tribunal.
2. Portugal 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 Portugal to report to him or her any changes in the conditions of detention suggested by the CPT.

Article 7

Information

1. Portugal 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 Portugal shall consult each other on all matters relating to the enforcement of the sentence upon the request of either party.

Article 8

Pardon and amnesty and commutation of sentences

1. If, pursuant to the applicable Portuguese national law, the convicted person is eligible for pardon or amnesty or commutation of the sentence, Portugal 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 amnesty or commutation of the sentence is appropriate. The Registrar shall inform Portugal of the President’s determination. If the President determines that a pardon or amnesty or commutation of the sentence is not appropriate, Portugal 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 Portugal and transfer the convicted person to another state or to the International Tribunal.
3. The competent authorities of Portugal 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, Portugal shall promptly inform the Registrar. The Registrar shall make the appropriate arrangements for the transfer of the convicted person. The competent authorities of Portugal shall allow for at least sixty 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 Portugal, and Portugal shall pay all other expenses incurred by the enforcement of the sentence.

Article 12

Entry into force

This Agreement shall enter into force upon notification by Portugal to the International Tribunal that the necessary internal requirements for that purpose have been met.

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 Portugal under the terms and conditions of this Agreement.
2. Upon consultation, either party may terminate this Agreement, upon two months prior notice of the decision to terminate. This Agreement shall not be terminated before sentences to which this Agreement applies have been completed or terminated and, if applicable, before the transfer of the convicted person 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 nineteenth day of December 2007, in duplicate, in English and Portuguese, both texts being equally authoritative.

FOR THE UNITED NATIONS

FOR THE PORTUGUESE REPUBLIC