

**AGREEMENT BETWEEN THE UNITED NATIONS AND THE
GOVERNMENT OF ITALY 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 Government of Italy (for the purposes of this Agreement hereinafter called the "requested State"),

RECALLING Article 27 of the Statute of the International Tribunal annexed to 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 ECOSOC resolutions 663 C(XIV) 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 the requested State to enforce sentences imposed by the International Tribunal.

Article 2

Procedure

1. A request to the Government of Italy to enforce a sentence shall be made by the Registrar of the International Tribunal (hereinafter: "the Registrar"), with the approval of President of the International Tribunal (hereinafter: "the President").

2. The Registrar shall provide the following documents to the Minister of Justice of the requested State (hereinafter: "the Minister of Justice") when making the request:

- a) a certified copy of the judgment;
- 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 further treatment in the requested State and any other factor relevant to the enforcement of the sentence.

3. The Minister of Justice shall submit the request to the competent national authorities, in accordance with the national law of the requested State, and more specifically, with Article 7(1) of the Decree-Law No. 544 of 28 December 1993, which was converted into Law No. 120 of 14 February 1994 (hereinafter: "Decree-Law No. 544").

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 conditions of imprisonment shall be governed by the law of the requested State, pursuant to Article 8(1) of the Decree-Law No. 544, and be 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, as well as in Article 8(2) of the Decree-Law No. 544.

3. If, pursuant to the applicable national law of the requested State, the convicted person is eligible for non-custodial measures or working activities outside the prison, or is entitled to benefit from conditional release, the Minister of Justice shall notify the President of the Tribunal.

4. If the President of the International Tribunal, in consultation with the Judges, does not consider that the application to the convicted person of one of the measures mentioned in para. 3 above is appropriate, the Registrar shall immediately notify the Minister of Justice, who, pursuant to Article 10 of this Agreement, will provide for the transfer of the convicted person to the International Tribunal.

5. 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

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 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. Following arrangements with the competent authorities of the Ministry of Justice, pursuant to Article 8(2) of the Decree Law No. 544, the Minister of Justice 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 Minister of Justice and to the President of the International Tribunal.

2. The Minister of Justice 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 Minister of Justice to report to him any changes in the conditions of detention suggested by the ICRC.

Article 7

Information

1. The Minister of Justice shall immediately notify the Registrar:

- a) if the convicted person has deceased;
- b) if the convicted person has escaped from custody;
- c) two months prior to the completion of the sentence.

2. Notwithstanding the previous paragraph, the President of the Tribunal and the Minister of Justice 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 shall notify the Registrar accordingly.

2. If the President of the International Tribunal, in consultation with the Judges, does not consider that the application to the convicted person of one of the measures mentioned in para. 1 above is appropriate, the Registrar shall immediately notify the

Minister of Justice, who, pursuant to Article 10 of this Agreement, will provide for the transfer of the convicted person to the International Tribunal.

Article 9

Termination of enforcement

1. The enforcement of the sentence shall cease:
 - a) when the sentence has been completed;
 - b) upon the decease 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 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 after the Italian Government has notified the United Nations of completion of all its relevant internal procedures.

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 6th day of February 1997, in English and in Italian, the English text being authoritative.

FOR THE GOVERNMENT OF THE ITALIAN
REPUBLIC



FOR THE UNITED NATIONS



The Registrar
International Criminal Tribunal
for the Former Yugoslavia