

THE TRANSFER OF CONVICTED OFFENDERS FROM AND TO COMMONWEALTH JURISDICTIONS

Memorandum by the Commonwealth Secretariat and a Discussion Paper prepared by
Mr. A. M. F. Webb, CMG, QC

Those who participated in the Winnipeg Meeting will know that Australia suggested that consideration should be given to the feasibility of developing arrangements under which prisoners undergoing long sentences in one member country could be transferred to another to serve their sentences. Ministers agreed that there was scope for enhancing mutual assistance in the area of the administration of justice, and the Commonwealth Secretariat therefore commissioned Mr. A. M. F. Webb (who was a member of the Colonial Legal Service for many years, in Malaya and Kenya, and who served in the Lord Chancellor's Office until his retirement) to prepare a Discussion Paper on the subject).

2. It will be recalled that a draft of Mr. Webb's paper was circulated to Law Ministers in November last year. The Government of Barbados has since indicated that they would wish to see the proposals extended at this stage to cover the enforcement of other sentences as adumbrated in paragraphs 33 and 34 of the paper so that, from the outset, any arrangements made could encompass all the methods of punishment which are acceptable to all Commonwealth jurisdictions.

3. The Government of Jamaica have also given their preliminary views on Mr. Webb's paper, and these are contained in LMM(80)8.

4. It did not prove possible to arrange for Mr. Webb's work to be revised in the time available and so his paper is attached very substantially in its original form. If any further comments are received

from Governments, these will be collated and distributed.

5. Mr. Webb reviews the history and content of the United Kingdom legislation which became largely irrelevant to the new Commonwealth, and traces recent developments both in the Commonwealth and in Europe. Drawing largely upon Canadian experience, he suggests a possible Commonwealth approach to the development of arrangements which would allow the removal of prisoners in appropriate cases to serve their sentences in their home countries.

6. As in the case of the Meeting's review of extradition arrangements, it is recognised that the time available at Barbados, and the absence of representatives of all departments affected by the proposals, will make it impracticable for Ministers to reach firm conclusions. However, they will no doubt wish to discuss the ideas put forward in principle to serve as a guide for future action and, at the same time, consider the desirability of extending their scope as suggested by the Government of Barbados.

7. If it is the wish of Ministers, the Secretary-General could circulate revised proposals which would take into account the conclusions of this Meeting. Thereafter the matter could be taken further as developments dictate. It might be considered appropriate in certain parts of the Commonwealth for the proposed arrangements to be discussed at a regional level, so that their practical application could be examined in the light of local circumstances; and against the background of common problems.

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By A. M. F. Webb, CMG, QC, Barrister-at-law

Introductory

1. At the Meeting of Law Ministers held in Winnipeg in August 1977 Ministers considered a memorandum by the Government of Australia, "Mutual Assistance in the Administration of Justice" (LMM(77)6), paragraphs 26 and 28 of which refer to the possibility that a person serving a prison sentence in one Commonwealth country might be removed to serve that sentence in another Commonwealth country:—

26. The Colonial Prisoners Removal Act 1884 of the United Kingdom Parliament made provision for the removal in certain circumstances of a prisoner undergoing a sentence of imprisonment in a British possession to another British possession or the United Kingdom to complete service of his sentence. The removal was effected pursuant to the order of the Secretary of State acting with the concurrence of the Governments of the British possessions concerned.

27. The matters to be taken into account in making an order under the Act of 1884 included such things as whether the life of the prisoner would be endangered or his health permanently impaired by further imprisonment in the first British possession. Considerations of that sort are not really appropriate to present conditions. Instead it is suggested that new criteria be established to enable countries to transfer prisoners to, for example, countries in which they are domiciled or where they have close ties with relatives or other persons.

28. In the present constitutional development of the Commonwealth of Nations it would no longer be appropriate to use the provisions of the Colonial Prisoners Removal Act. It would be more appropriate to develop arrangements under which prisoners undergoing long sentences in one member country may be transferred to another country. (1977) Meeting of Commonwealth Law Ministers, Minutes of Meeting and Memoranda, p. 179 at p. 181).

2. The Law Ministers agreed that there was scope for mutual assistance in this area, amongst a number of others, of the administration of justice and endorsed the suggestion that the Commonwealth Secretariat should examine this problem and consult Commonwealth countries about the feasibility of making arrangements to this end.

3. The criminal law of the several member countries of the Commonwealth is governed, with some few exceptions, by the concept of national sovereignty. Each country takes as its basis the principle of territoriality, and the effect and consequences of the judicial decisions of its courts do not in general extend beyond its frontiers.

4. This situation does not fully meet present-day requirements. If society is to be effectively protected, account must be taken of trends in crime. The problems are, like many others, becoming international, largely owing to the considerable development of economic resources, improved

means of transport and communications, and to the ensuing mobility of populations.

5. Increasingly, Governments are being approached by the relatives of their nationals who have been imprisoned, often for lengthy terms, in foreign jurisdictions. Although Governments have at times wished to respond to requests that arrangements be made for the repatriation of their nationals in such circumstances, the absence of any international machinery or domestic legislation has rendered this impossible. There is, too, for the country of imprisonment the expense of maintaining a foreigner within its prison system, as the simple expedient of immediate deportation is, in effect, a pardon. Moreover, penal policy has come to lay greater emphasis upon treatment of the offender. It would seem that resocialisation is often considerably facilitated when the sanctions imposed upon the offender are carried out in his home country rather than in the country in which the offence was committed and the sentence passed. This policy is also rooted in humane considerations, in particular the understanding of the detrimental influences upon a prisoner of difficulties of communication by reason of language barriers, alienation from local culture and habits and the absence of contact with relatives and friends.

6. The Government of Canada has responded to these challenges by concluding treaties with the United States and with Mexico (reproduced as Annex A to this memorandum), and it is understood that consultations are taking place with a view to its concluding similar arrangements with a number of other countries.

7. In the past this state of affairs aroused little attention, since very few cases were involved. However, today there is so much movement between different countries of the world, and particularly between Member countries of the Commonwealth, that a more equitable and humane system has become desirable. The mutual aid which is now contemplated, not merely on a Commonwealth basis but potentially on an international scale, will facilitate the prevention of the relapse into crime by making available across frontiers those methods of individual amendment and social rehabilitation where they exist, which have proved successful on a national scale.

Colonial Prisoners Removal Acts 1869 and 1884

8. For particular reasons there was a development in this field within the former British Empire, not primarily prompted by abstract theories of penology but rather on practical considerations and for reasons of health. The Colonial Prisoners Removal Acts 1869 and 1884 were enacted by the Parliament of the United Kingdom in circumstances which were, of

course, very different from those which obtain today. The 1869 Act provides for the removal of an adult prisoner from one colony to another for the purpose of undergoing his punishment and for his return, in pursuance of an agreement made between the two governments concerned and sanctioned by Order in Council. There is no definition in the Act of "prisoner" and it would probably not include a juvenile offender undergoing modern methods of treatment. Agreements under the 1869 Act were sanctioned between the Falkland Islands and Malta (removal from the former to the latter); between Grenada, St. Lucia and St. Vincent (reciprocal between any two); between Nyasaland and Mauritius (removal from the former to the latter); and reciprocity, between Antigua and Montserrat, Antigua and the Virgin Islands, and Antigua and St. Christopher, Nevis, Anguilla.

9. When the Bill for the 1884 Act was before Parliament it was described as being no more than the logical extension of the principle already stated and enshrined in the 1869 Act. The Bills for both Acts had been circulated, in draft, to all colonial governments and no dissent from their provisions is recorded. The 1884 Act set up a centralised and rather less formal system. The principle is that an adult convict sentenced to imprisonment in one British possession may be removed to another possession to serve his sentence, and he may be returned to the possession where he was sentenced to complete his sentence or to be released. The Act applies to all British possessions, and could be extended by Order in Council to other places in which Her Majesty had jurisdiction. The receiving country, but not the sending country, may be the United Kingdom, and what, therefore, is particularly anomalous in present circumstances is that a convict sentenced to imprisonment in the United Kingdom cannot be removed to serve that sentence in a British possession, although a person sentenced in a British possession can be removed to the United Kingdom to serve his sentence there.

10. The 1869 Act defines "colony" as not including any place within the United Kingdom, the Isle of Man or the Channel Islands or within British India, but including "any plantation, territory or settlement situate elsewhere within Her Majesty's dominions and subject to the same local government" (section 2) and the 1884 Act defines "British possession" with the same exclusions and including "all other territories and places being part of Her Majesty's dominions, and all territories and places within Her Majesty's dominions which are not part of India and are under one legislature shall be deemed to be one British possession" (section 18). Both Acts could be extended by Order in Council, under the Foreign Jurisdiction Act 1890, to any place out of Her Majesty's dominions in which Her Majesty had jurisdiction as if that place were a British possession and part of Her Majesty's dominions. A number of Orders have been made in exercise of this power extending, in particular, the 1884 Act not only to former protectorates and protected states but also to other places in which Her Majesty's jurisdiction was less precisely

founded, although it was no less real. It is unnecessary, for the purpose of this memorandum, to list all these Orders; they can be traced in any of the standard works.

11. Although, as above remarked, neither Act defines a prisoner by reference to age, it is clear that these Acts applied in practice exclusively to adults, if only because of their application to prisoners. If at that period there was any form of custodial sentence applicable only to a juvenile offender, not being imprisonment, then neither Act could have been operated so as to effect the removal of such a juvenile offender.

12. Both the 1869 and the 1884 Acts applied to and in all those countries which were colonies/British possessions (as so defined) at the respective dates of their enactment, or to which they were subsequently extended by Order. It is at least arguable that some of those countries, upon becoming independent sovereign states, retained those laws as part of their inheritance, and that the effect of any agreements which had then been made and sanctioned remained in full force and effect. In a number of cases, however, it may be that these powers are regarded as now being obsolete. Even if it were desired to invoke them, the Acts have not specifically been adapted to changed circumstances: thus the Acts require action by "the Governor" or "the Governor in Council", and these, or other terms, may not have been appropriately amended.

13. Even if available it would not seem appropriate to use the provisions of the Colonial Prisoners Removal Acts 1869 and 1884 in the present state of constitutional development of the Commonwealth. Furthermore the Acts are deficient in at least four respects. The Acts are not territorially comprehensive. The Acts do not apply to all offenders upon whom a custodial sentence may be imposed. Even as regards those members of the Commonwealth in which, or in respect of which, the Acts are technically in force, they may not in practice be capable of being operated. And, as previously mentioned, it is today anomalous for there to be no possibility of removal from the United Kingdom. There is a further serious deficiency in as much as the Acts are restricted to persons sentenced to imprisonment, which could preclude their application to juvenile offenders.

14. Another consideration is the basis upon which the 1884 Act permits the removal of a convict. The 1869 Act specifies no criteria with regard to the prisoner which are required to be satisfied before he can be removed, but section 2 of the 1884 Act sets forth five factors:—

2. Where as regards a prisoner undergoing a sentence of imprisonment in any British possession for any offence it appears to the removing authority hereinafter mentioned either
 - (a) that it is likely that the life of the prisoner will be endangered or his health permanently injured by further imprisonment in such British possession; or

- (b) that the prisoner belonged, at the time of committing the said offence, to the Royal Navy or to Her Majesty's regular military forces; or
- (c) that the offence was committed wholly or partly beyond the limits of the said British possession; or
- (d) that by reason of there being no prison in the said British possession in which the prisoner can properly undergo his sentence or otherwise the removal of the prisoner is expedient for his safer custody or for more efficiently carrying his sentence into effect; or
- (e) that the prisoner belongs to a class of persons who under the law of the said British possession are subject to removal under this Act;

in any such case the removing authority may, subject nevertheless to the regulations in force under this Act, order such prisoner to be removed to any British possession or to the United Kingdom to undergo his sentence or the residue thereof.

15. It must be asked whether these limitations are still apt, or whether a citizen of one Commonwealth country who is sentenced in another Commonwealth country should be able to be transferred to his native country, there to serve his sentence, provided that the consent of both Governments and of the prisoner are given. This, indeed, is the formula which has found favour with Canada.

16. Although the United Kingdom Acts are restricted to the transfer of persons sentenced to imprisonment, there are no limitations in their application as to the length of such sentence or as to the nationality of the prisoner.

Recent Developments

17. Since the 1884 Act was passed there have been many developments in penology and a number of methods of disposal of those convicted of criminal offences, other than imprisonment, are now available and are constantly used. Sentences of imprisonment can now be modified by remission and by parole, and may even not take effect immediately (suspended sentences). Although the memorandum by the Government of Australia refers in its paragraph 28 to "long sentences" (see paragraph 1 above), so that the consequences of remission and parole must be considered in the context of any new arrangements, presumably this should not be taken to mean that the whole subject of alien offenders, and the possibility of securing the enforcement of any sentence in a country other than that in which it was imposed, should not be the subjects of future study.

18. Although the recognition of criminal judgments and the enforcement of sentences for criminal offences by a country other than that in which the conviction was entered and the sentence imposed is a recent development in international law, there are already a number of precedents. The first step was indeed taken by the United Kingdom a century ago, by the 1869 Act. In 1948 Norway, Denmark and Sweden entered into a treaty for the reciprocal enforcement of judgments in criminal matters involving fines, confiscation or legal costs. In 1963 the five Scandinavian countries made an agreement which permits the transfer of an offender to his

native country to serve a sentence passed in another Scandinavian country. The Council of Europe has formulated and adopted three conventions, two in 1964 and one in 1970, providing for the reciprocal enforcement, by member States of the Council on ratification or acceptance by them of a convention, of sentences imposed for road traffic offences; of sentences involving supervision of those conditionally sentenced or conditionally released and of sentences generally imposed for criminal offences. And, as has been mentioned, Canada entered into treaties in 1977 with the United States of America and with Mexico under which Canadian citizens undergoing sentences of imprisonment or on parole may be returned to Canada, there to serve their sentences or the residue thereof: similarly, American and Mexican citizens in prison in Canada may be transferred to their respective home countries. Australia has long had legislation, closely modelled on the 1884 Act of the United Kingdom, providing for the removal of prisoners between the States and within the Territories under the authority of the Commonwealth; however, because of its origins, this legislation has some of the limitations of the United Kingdom Act, and it is of restricted territorial application.

A possible Commonwealth approach

19. The European precedents, although interesting and stimulating, do not afford a great deal of assistance in suggesting how the Commonwealth might proceed with the matters under consideration. Although the civil law jurisprudence is a common factor in Europe, the many differences in the codes of criminal law and procedure, and in penal philosophy and methods, of the various countries in Europe have resulted in conventions of considerable complexity and of great detail. The instrument of an international convention, to whose terms all the participating governments must agree and to which individual governments can then accede (albeit with the possibility of reservations and special provisions) seems to be unnecessarily cumbersome, if not indeed impracticable. The Canadian concept of separate treaties, or perhaps even less formal agreements between members of the Commonwealth (for the most part bilateral, but possibly in certain regions, e.g. the Commonwealth Caribbean, multilateral), might well prove both easier to accomplish and more effective in practice.

20. Although local legislation is essential to implement any such arrangements, there are certain aspects which would properly be included in agreements made between governments. This would not only be constitutionally correct, but would also free a government to make agreements which differed in detail from one country to another, as do the Canadian treaties, which nevertheless serve as admirable models.

21. It will be observed that the treaties deal with the following matters: the offender must be a citizen of the country to which he is to be transferred; the category of offences to which the arrangements apply is specified, and the act of the offender must consti-

tute an offence in both countries; and certain classes of offences are excluded, such as fiscal offences and those affecting sovereign rights, security and other essential interests. Even with regard to prison sentences qualifications can be made: for example, short terms may be excluded and the minimum period remaining to be served may also be prescribed. As well, the the scope of the arrangements can be extended to non-custodial sentences, such as probation, disqualification from driving, and even monetary sanctions. The responsibility for making the arrangements for transferring prisoners and the liability for the costs of transfer are, and should be, prescribed in the treaties, along with other administrative details.

22. As far as the financial implications of any arrangement for the transfer of offenders are concerned, there appear to be two clear alternatives. One is that the government of the country in which the offender is convicted, upon his transfer to his home country being agreed with the government of that country, should make the arrangements and pay for his journey on the basis that that government will be relieved of the future cost of keeping the offender in prison, and of supervising him on parole. The second alternative approach is that the government of the country whose national is being repatriated has the greater interest in the well-being and rehabilitation of the offender. The latter is the approach preferred in the Canadian treaties. It will, of course, be a matter for the particular governments, when negotiating any arrangements, to decide how to deal with this matter.

23. It will be necessary, both when negotiating any agreement with another country and especially when drafting a Bill for any proposed legislation, to consider the constitutional aspects of the matter as well as the implications of any international obligations or convictions which might have a bearing. The most obvious point concerns human rights provisions. Generally, local legislation will be able to make lawful the imprisonment in transit of an offender being transferred between two other jurisdictions, and it is thought that the requirement in the draft that any person who is to be transferred from one country to another, i.e. conveyed by arrangements made between governments and at their expense, must give his consent would avoid any other difficulty.

A draft Bill

24. Whenever such arrangements are made, it will, of course be essential for the governments concerned each to legislate in order to make them legally effective. An annotated draft Bill is annexed (Annex B), not in any sense as a "model Bill" but simply as a convenient way of highlighting some of the essential features of such legislation. The draft is perforce no more than an outline. For ease of reference, too, the Canadian Act which came into force on 17 July 1978 is reproduced as Annex C.

25. The draft is founded on two basic principles. First, following the Canadian precedent, it is only in respect of one of its own citizens that a country will

enforce a sentence imposed on him in another country. (The European conventions, on the other hand, require a country which adheres to one or other of them to enforce such a sentence on a person ordinarily resident therein). Secondly, again following Canada, that not only the consent of a person who wishes to be transferred from one country to his home country be required (except in the case of the mentally ill), but the consent of both the governments concerned will be necessary. (It is interesting to note that the European conventions, while stipulating the consents of governments, do not require that of the person concerned). The initiative for requesting the transfer of a person serving a prison sentence or otherwise detained in custody will lie either with the prisoner, or with the government of the country in which he is incarcerated.

26. A fundamental difference of principle between the European conventions and the arrangements now proposed is that under the former the obligations of adherents are strictly prescribed and the circumstances in which a government can refuse to enforce a sentence are limited, while under the draft each government must consider each case individually and decide whether or not to accept responsibility for enforcement.

27. It will be noted that the draft contains provision for more than the transfer of persons actually serving prison sentences and the immediate consequences of imprisonment, namely, parole, remission and after-care; the last-named is a period of compulsory supervision after release from prison (if the sentence imposed exceeds a specified minimum term), borstal or detention centre (so that all young offenders given any custodial sentence are supervised after release). The draft also provides for juvenile offenders on probation and for detained offenders suffering from mental illness. It will be for each Commonwealth government to decide which provisions should be included in any legislation to be enacted locally.

28. The draft envisages a schedule of countries to which the legislation would apply, and for that schedule to be added to as further arrangements are concluded. It would also be possible to provide that not every provision of the legislation should necessarily apply to every country named in the schedule, thus maintaining flexibility. Some notes on particular clauses of the draft are appended to those clauses.

29. The draft is designed for unitary Constitutions. Member countries which are federations would have to adapt the concepts underlying the various provisions of the draft to their own respective constitutional arrangements. It might, for example, be necessary to provide for the consent of a constituent government, if prison or other services involved with a transferred person, or with the implementation of a sentence imposed elsewhere are, the latter's responsibility rather than those of the central government.

30. In all circumstances save one the conviction and sentence actually recorded and imposed will be deemed for all purposes and by all authorities in the country enforcing the sentence to be a conviction and

sentence of a court in that country. This will import the consequences of escape or default. The exception concerns juvenile offenders. There are such differences between one country and another, even within the Commonwealth, in the classification and treatment of offenders who are not adults that it does not seem possible to equate automatically a transferred juvenile offender with a person of the same age who has been sentenced in the home country. The Canadian Act recognises the reality of this problem. Accordingly, the draft proposes that in these circumstances a transferred young offender shall be brought before a court of competent jurisdiction in his home country on arrival and that that court shall sentence him according to the law and practice of that country for dealing with an offender of his age. The conviction (by whatever name called) will not be in question. If two countries, in negotiating transfer arrangements, find that their respective laws relating to juvenile offenders, the procedure for dealing with them and their methods of treating them, are identical or are very nearly the same, they can agree that the order of the court in the one country shall be carried into effect in the other without any intervening court proceedings in that other.

31. The lawfulness of the custody of a prisoner during his transfer presents potential jurisprudential and jurisdictional problems. These will not arise in the rare cases of neighbouring countries with a common frontier across which the prisoner is transferred, and they may not arise if the means of transportation is within the sovereignty of one country or the other, for example, by ship or aircraft registered in the one or the other. But where the vehicle of transportation is foreign to both countries concerned in a transfer, difficulties could arise in practice which cannot with certainty be overcome. In the case of transfer by air the possibility of landing during the journey in a third country and of disembarking, even temporarily, may give rise to further difficulties and to the risk of escape. Immigration laws and airport security may minimise these difficulties in practice, and in some countries existing legislation may cover the point. While clause 13 of the draft is not proffered as being effective in all circumstances, even where the conducting officer is in the service of the government of the country to which the prisoner is being transferred, it is put forward on the basis that these potential difficulties do not appear to have materialised in respect of extradition, and if they are real one would have expected them to have done so.

32. The draft empowers the Minister to make rules prescribing the procedure to be followed in such cases. It is not possible to propose a draft of such rules, but the procedure might be on the following lines. The Minister, upon agreeing on behalf of his government to enforce a sentence or other order of a court, would transmit the request, with a copy of the

intimation of his agreement, and the accompanying documents to the proper official of the appropriate court, who either himself or on the order of a judge or magistrate, would issue a warrant to the offender to appear before the court. The court proceedings would not be a trial, but would resemble rather the proceedings in that court following conviction and sentence, when the effect and consequences are explained to the offender.

Suspended penal sentences, monetary penalties etc.

33. The ambit of the present study is confined to the question of prisoners and juveniles on probation. These appear to be the core element, but if the limited proposals now put forward find acceptance in principle and prove efficacious in practice, the possibility of widening the scheme would arise. As the European conventions illustrate, nowadays probation and suspended penal sentences are widely recognised facets of penal systems and are used to provide better protection against crime while at the same time lightening the burden of prison costs and of aid to prisoners' families. Sometimes, too, where foreigners or non-residents are involved, courts are reluctant to pass a sentence which is not certain to be put into effect in another country—in consequence, offenders who might normally have qualified for suspended sentences or probation are either given an immediate sentence of imprisonment or released only in order to be deported, thus making it more likely that they will reoffend in the country to which they are deported.

34. Although the emphasis has in the past been on the transfer of prisoners, modern trends suggest that at some time in the future thought may have to be given to the transfer of persons on whom sentences other than imprisonment have been imposed, and to the transfer of the enforcement of other sentences. Thus, a person convicted of an offence in one Commonwealth country, of which he was not a citizen, and ordered to pay compensation to the victim (and perhaps costs as well) might only be able to obtain the means to satisfy those orders if he could return to his own country, because it would be easier for him to obtain employment at home. It should be possible to make arrangements whereby money ordered to be paid by a court in one Commonwealth country could be paid to a court in another country and then transferred by inter-governmental channels to the court which had made the order. There is an analogy here with the existing arrangements for the reciprocal enforcement of maintenance orders. In times of increasing levels of road accidents, too, it may be thought desirable that a disqualification imposed in one country, for example, from driving a motor vehicle, should be enforceable in another country, rather than permit an offender to escape the consequences of his actions simply by crossing a frontier.

ANNEX A

TREATY BETWEEN CANADA AND THE UNITED STATES OF AMERICA ON THE EXECUTION OF PENAL SENTENCES

The Government of Canada and the Government of the United States of America,

Desiring to enable Offenders, with their consent, to serve sentences of imprisonment or parole or supervision in the country of which they are citizens, thereby facilitating their successful reintegration into society;

Have agreed as follows:

ARTICLE I

For the purpose of this Treaty:

(a) "Sending State" means the Party from which the Offender is to be transferred;

(b) "Receiving State" means the Party to which the Offender is to be transferred;

(c) "Offender" means a person who, in the territory of either Party, has been convicted of a crime and sentenced either to imprisonment or to a term of probation, parole, conditional release or other form of supervision without confinement. The term shall include persons subject to confinement, custody or supervision under the laws of the Sending State respecting juvenile offenders; and

(d) "Citizen" includes an Offender who may be a dual national of the Parties and in the case of the United States also includes nationals.

ARTICLE II

The application of this Treaty shall be subject to the following conditions:

(a) That the offense for which the Offender was convicted and sentenced is one which would also be punishable as a crime in the Receiving State. This condition shall not be interpreted so as to require that the crimes described in the laws of the two Parties be identical in such matters not affecting the character of the crimes as the quantity of property or money taken or possessed or the presence of interstate commerce.

(b) That the Offender is a citizen of the Receiving State.

(c) That the offense is not an offense under the immigration laws or solely against the military laws of a Party.

(d) That there is at least six months of the Offender's sentence remaining to be served at the time of his application.

(e) That no proceeding by way of appeal or of collateral attack upon the Offender's conviction or sentence be pending in the Sending State and that the prescribed time for appeal of the Offender's conviction or sentence has expired.

ARTICLE III

1. Each Party shall designate an authority to perform the functions provided in this Treaty.

2. Each Party shall inform an Offender, who is within the scope of the present Treaty, of the substance of the Treaty.

3. Every transfer under this Treaty shall be commenced by a written application submitted by the Offender to the authority of the Sending State. If the authority of the Sending State approves, it will transmit the application, together with its approval, through diplomatic channels to the authority of the Receiving State.

4. If the authority of the Receiving State concurs, it will so inform the Sending State and initiate procedures to effectuate the transfer of the Offender at its own expense. If it does not concur, it will promptly advise the authority of the Sending State.

5. If the Offender was sentenced by the courts pursuant to the laws of a state or province of one of the Parties, the approval of the authorities of that state or province, as well as that of the federal authority, shall be required. The federal authority of the Receiving State shall be responsible for the custody of the transferred Offender.

6. In deciding upon the transfer of an Offender, the authority of each Party shall bear in mind all factors bearing upon the probability that transfer will be in the best interests of the Offender.

7. No Offender shall be transferred unless:

(a) he is under a sentence of imprisonment for life; or

(b) the sentence which he is serving states a definite termination date, or the authorities authorized to fix such a date have so acted; or

(c) he is subject to confinement, custody or supervision under the laws of the Sending State respecting juvenile offenders; or

(d) he is subject to indefinite confinement as a dangerous or habitual offender.

8. The Sending State shall furnish to the Receiving State a statement showing the offense of which the Offender was convicted, the termination date of the sentence, the length of time already served by the prisoner and any credits to which the Offender is entitled on account of work done, good behaviour or pretrial confinement. Where requested by the Receiving State a translation shall be provided.

9. Each Party shall establish by legislation or regulation the procedures necessary and appropriate to give legal effect within its territory to sentences pro-

nounced by courts of the other Party and each Party agrees to cooperate in the procedures established by the other Party.

10. Delivery of the Offender by the authorities of the Sending State to those of the Receiving State shall occur at a place agreed upon by both Parties. The Sending State shall afford an opportunity to the Receiving State, if it so desires, to verify, prior to the transfer, that the Offender's consent to the transfer is given voluntarily and with full knowledge of the consequences thereof, through the officer designated by the laws of the Receiving State.

ARTICLE IV

1. Except as otherwise provided in this Treaty, the completion of a transferred Offender's sentence shall be carried out according to the laws and procedures of the Receiving State, including the application of any provisions for reduction of the term of confinement by parole, conditional release or otherwise. The Sending State shall, in addition, retain a power to pardon the Offender and the Receiving State shall, upon being advised of such pardon, release the Offender.

2. The Receiving State may treat under its laws relating to youthful offenders any Offender so categorized under its laws regardless of his status under the laws of the Sending State.

3. No sentence of confinement shall be enforced by the Receiving State in such a way as to extend its duration beyond the date at which it would have terminated according to the sentence of the court of the Sending State.

4. The Receiving State shall not be entitled to any reimbursement from the Sending State for the expenses incurred by it in the completion of the Offender's sentence.

5. The authorities of each Party shall at the request of the other Party provide reports indicating the status of all Offenders transferred under this Treaty, including in particular the parole or release of any Offender. Either Party may, at any time, request a special report on the status of the execution of an individual sentence.

6. The transfer of an Offender under the provisions of this Treaty shall not create any additional disability under the laws of the Receiving State or any state or province thereof beyond those which the fact of his conviction may in and of itself already have created.

ARTICLE V

Each Party shall regulate by legislation the extent, if any, to which it will entertain collateral attacks upon the convictions or sentences handed down by it in the cases of Offenders who have been transferred by it. Upon being informed by the Sending State that the conviction or sentence has been set aside or otherwise modified, the Receiving State shall take appro-

appropriate action in accordance with such information. The Receiving State shall have no jurisdiction over any proceedings, regardless of their form, intended to challenge, set aside or otherwise modify convictions or sentences handed down in the Sending State.

ARTICLE VI

An Offender delivered for execution of a sentence under this Treaty may not be detained, tried or sentenced in the Receiving State for the same offense upon which the sentence to be executed is based. For purposes of this Article, the Receiving State will not prosecute for any offense the prosecution of which would have been barred under the law of that State, if the sentence had been imposed by a court, federal, state, or provincial, of the Receiving State.

ARTICLE VII

If either Party enters into an agreement for the transfer of sanctions with any other State, the other Party shall cooperate in facilitating the transit through its territory of Offenders being transferred pursuant to such agreement. The Party intending to make such a transfer will give advance notice to the other Party of such transfer.

ARTICLE VIII

1. This Treaty shall be subject to ratification and shall enter into force on the date on which instruments of ratification are exchanged. The exchange of instruments of ratification shall take place at Ottawa as soon as possible.

2. The present Treaty shall remain in force for three years from the date upon which it enters into force. Thereafter, the Treaty shall continue in force until thirty days from the date upon which either Party gives written notice to the other Party of its intention to terminate the Treaty.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed the present Treaty.

DONE in duplicate, in the French and English languages, each language version being equally authentic, at Washington this second day of March, 1977.

TREATY BETWEEN CANADA AND THE UNITED MEXICAN STATES ON THE EXECUTION OF PENAL SENTENCES

The Government of Canada and the Government of the United Mexican States,

DESIRING to promote the rehabilitation of offenders by enabling them to serve sentences in the country of which they are nationals,

Have agreed as follows:

ARTICLE I

(1) Sentences imposed in the United Mexican States on nationals of Canada may be served in Canada in accordance with the provisions of this Treaty.

(2) Sentences imposed in Canada on nationals of the United Mexican States may be served in Mexico in accordance with the provisions of this Treaty.

ARTICLE II

The application of this Treaty shall be subject to the following conditions:

(a) That the offence for which the offender was convicted and sentenced is one which would also be punishable as a crime in the Receiving State.

(b) That the offender is a national of the Receiving State.

(c) That the offender is not a domiciliary of the Sending State.

(d) That at least six months of the offender's sentence remain to be served at the time of the application referred to in paragraph 3 of Article IV.

(e) That no proceeding by way of appeal or of collateral attack upon the offender's conviction or sentence is pending in the Sending State and that the prescribed time for appeal of the offender's conviction or sentence has expired.

ARTICLE III

(1) Each Party shall explain the substance of the present Treaty to any offender who is within its scope.

(2) Every transfer under the Treaty shall be commenced by the Authority of the Sending State. Nothing in this Treaty shall prevent an offender from submitting a petition to the Sending State to be considered for transfer.

(3) If the Authority of the Sending State finds the transfer of an offender appropriate, and if the offender gives his express consent for his transfer, it will transmit an application, through diplomatic channels, to the Authority of the Receiving State.

(4) If the Authority of the Receiving State concurs, it will so inform the Sending State and initiate procedures to effect the transfer of the offender. If it does not concur, it will promptly advise the Authority of the Sending State.

(5) In deciding upon the transfer of an offender the Authority of each Party shall bear in mind all factors bearing upon the probability that the transfer will contribute to the social rehabilitation of the offender, including the nature and severity of his offence and his previous criminal record, if any, his medical condition, the strength of his connections by residence, presence in the territory, family relations and otherwise to the social life of the Sending State and the Receiving State.

(6) If the offender was sentenced by the courts of a state or province of one of the Parties, the approval of the authorities of that state or province, as well as that of the federal authority, shall be required. The federal authority of the Receiving State shall, however, be responsible for the custody of the transferred offender.

(7) No offender shall be transferred unless either the sentence which he is serving has a specified duration, or such a duration has subsequently been fixed by the appropriate administrative authorities.

(8) The Sending State shall furnish the Receiving State a statement showing the offence of which the offender was convicted, the duration of the sentence, the length of time already served by the prisoner and any credits to which the offender is entitled, such as, but not limited to, work done, good behaviour or pre-trial confinement. Such statement shall be translated into the language of the Receiving State and duly authenticated. The Sending State shall also furnish the Receiving State a certified copy of the sentence handed down by the competent judicial authority and any modifications thereof. It shall also furnish additional information that might be useful to the Authority of the Receiving State in determining the treatment of the offender with a view to his social rehabilitation.

(9) If the Receiving State considers that the documents supplied by the Sending State do not enable it to implement this Treaty, it may request additional information.

(10) Each Party shall take the necessary legislative measures and, where required, shall establish adequate procedures, to give, for the purposes of this Treaty, legal effect within its territory to sentences pronounced by courts of the other Party.

ARTICLE V

(1) Delivery of the offender by the authorities of the Sending State to those of the Receiving State shall occur at a place agreed upon by both Parties. The Receiving State shall be responsible for the expenses of the transfer from the time when the offender passes into its custody.

(2) The Sending State shall afford an opportunity to the Receiving State, if it so desires, to verify, prior to the transfer, that the offender's consent to the transfer is given voluntarily and with full knowledge of the consequences thereof, through the officer designated by the laws of the Receiving State.

(3) Except as otherwise provided in this Treaty, the completion of a transferred offender's sentence shall be carried out according to the laws and procedures of the Receiving State, including the application of any provisions for reduction of the term of confinement by parole, conditional release or otherwise. The Sending State shall, however, retain its power to pardon or grant amnesty to the offender and the Receiving State shall, upon being advised of such pardon or amnesty, release the offender.

(4) No sentence of confinement shall be enforced by the Receiving State in such a way as to extend its duration beyond the period of confinement imposed by the sentence of the court of the Sending State.

(5) The Receiving State shall not be entitled to any reimbursement for the expenses incurred by it in the completion of the offender's sentence.

(6) At the request of one of the Parties, the other Party shall provide a report on the status of confinement of any offender transferred under this Treaty, including in particular parole or release.

(7) The transfer of an offender under the provisions of this Treaty shall not create any additional disability under the laws of the Receiving State or any state or province thereof beyond those which the fact of his conviction may in and of itself already have created.

ARTICLE VI

The Sending State shall have exclusive jurisdiction over any proceedings, regardless of their form, intended to challenge, modify or set aside sentences handed down by its courts. Consequently the Receiving State shall have no jurisdiction over such proceedings. The Receiving State shall, upon being advised by the Sending State of action affecting the sentence, take the appropriate action in accordance with such advice.

ARTICLE VII

An offender delivered for execution of a sentence under this Treaty may not be detained, tried or sentenced in the Receiving State for the same offence upon which the sentence to be executed is based. For purposes of this Article, the Receiving State will not prosecute for any offence the prosecution of which would have been barred under the law of that State, if the sentence had been imposed by one of its courts, federal state or province.

ARTICLE VIII

(1) This Treaty is also applicable to persons subject to supervision or other measures under the laws of one

of the Parties relating to youthful offenders. The Parties shall, in accordance with their laws, agree to the type of treatment to be accorded such individuals upon transfer. Consent for the transfer shall be obtained from the legally authorized person.

(2) Nothing in this Treaty shall be interpreted to limit the ability which the Parties may have, independent of the present Treaty, to grant or accept the transfer of youthful or other offenders.

ARTICLE IX

For the purpose of this Treaty,

- (a) "Sending State" means the Party from which the offender is to be transferred.
- (b) "Receiving State" means the Party to which the offender is to be transferred.
- (c) A "national" means, in the case of Canada, a Canadian citizen.
- (d) "Offender" means a person who, in the territory of one of the Parties, has been convicted of a crime and sentenced either to imprisonment or to a term of probation, parole, conditional release or any other form of supervision without confinement.
- (e) A "domiciliary" means a person who has been present in the territory of one of the Parties for at least five years with an intent to remain permanently therein.

ARTICLE X

(1) This treaty is subject to ratification. The exchange of instruments of ratification shall take place at Mexico, D.F.

(2) This Treaty shall enter into force thirty days after the exchange of ratifications and shall remain in force for three years.

(3) Should neither contracting Party have notified the other ninety days before the three-year period mentioned in the preceding paragraph has expired of its intention to allow the Treaty to terminate, the Treaty shall remain in force for another three years, and so on every three years.

ANNEX B

[Notes on the several provisions of the draft appear in brackets immediately following them]

DRAFT BILL

for

An Act for the carrying into effect of arrangements made for the transfer of persons/citizens convicted in other countries of criminal offences and for the enforcement of sentences passed upon them; and for purposes incidental thereto and connected therewith.

- Short title 1. This Act may be cited as the Transfer of Offenders Act 19 .
- [In the interests of brevity the title is restricted to the principal purpose of the legislation. There seems to be no purpose in providing a commencement date or for an appointed day; the effective date will, in respect of any scheduled country, be that upon which the Schedule is amended by the inclusion in it of that country.]
- Interpretation 2. In this Act, unless the context otherwise requires—
- “convicted” includes a finding of guilt;
- [To provide for the case of juveniles, who, in some jurisdictions, are not “convicted” of offences.]
- “foreign offender” means an offender who is a citizen of a scheduled country;
- “imprisonment” includes detention;
- [Juveniles may not be sentenced to imprisonment, but rather to be detained; this also applies to offenders who are mentally ill and found not to be responsible for their actions.]
- “offender” means a person, irrespective of age, being a citizen of X, who has been convicted of an offence by a court of competent jurisdiction and upon whom any sentence has been imposed in consequence thereof;
- [“X” means the country enacting the Bill, here and elsewhere in the draft.]
- “prescribed” means prescribed by rules made under section 15;
- “sentence” includes imprisonment, and supervision while at liberty on parole or on probation;
- [If enforcement of any other possible sentences, for example, community service is possible, these should be added to the definition.]
- “scheduled country” means a country named in the Schedule with which arrangements have been made for the transfer of offenders or for the enforcement of sentences;
- “transferred” means transferred from a scheduled country to X.
- [The provisions of the Interpretation Act will have to be borne in mind in drafting this clause.]
- Request for transfer and signification of agreement 3.—(1) When the Minister is informed by the responsible authority of a scheduled country that an offender has requested transfer to X and that the government of that country has agreed to, and requests such transfer, the Minister shall cause the said authority to be advised whether the Government of X agrees or does not agree to such transfer; and if both governments agree to such transfer the Minister shall initiate the prescribed procedure.
- (2) The agreement of the Government of X to the transfer of an offender from a scheduled country, and to the enforcement of a sentence imposed upon him in a scheduled country, shall not be given unless the offender has completed the prescribed form and that form has been delivered to the Minister.
- Transferred offenders
Effect of transfer 4. A transferred offender shall be dealt with, and the sentence imposed upon him shall be enforced, in accordance with the provisions of this Act.
- 5.—(1) When an offender is transferred to X the conviction and sentence recorded by the court in the scheduled country shall, subject to subsection (3), be deemed for all purposes to be a conviction recorded and a sentence imposed by a court of competent jurisdiction in X.

(2) On the transfer of an offender any document transmitted by the responsible authority of the scheduled country from which the offender is transferred, being a document in which the conviction of, and the sentence imposed upon, the offender is set out, shall, if that document purports to be signed by a judicial officer or authority, or by the person in charge of any penal institution in that country, be accepted as evidence of the facts stated therein unless the contrary is proved, without proof of the signature or the official character of the person by whom it purports to be signed; and thereafter any such document shall be treated as a like document signed by a person convicted and sentenced in X, and shall, subject to the provisions of this Act, have effect according to the tenor thereof.

(3) The conviction of, and the sentence imposed upon, an offender shall not be subject to any appeal or to any form of review in X.

[The purpose of subsection (3) is to preclude the power of a Minister to refer a case to the Court of Appeal or himself to order a new trial, as well as to prevent an appeal.]

Prisoner to be
detained in
prison

6. A transferred offender who has been sentenced to a term of imprisonment shall be detained in prison or in such other institution as the Minister may direct.

Juvenile
offenders

7.—(1) A transferred offender sentenced to a term of imprisonment who would, if he had been convicted in X, have been treated, by reason of his age, as a child/juvenile/young person and sentenced accordingly, shall be dealt with as his age dictates in accordance with subsection (2).

(2) An offender to whom subsection (1) applies shall be produced before the High Court/a juvenile/magistrate's court having jurisdiction to try the offence of which the offender has been convicted and that court shall sentence him on the basis of the conviction by the court in the scheduled country and with regard to the nature of the offence and to any observations made by the convicting court in passing sentence as if the offender had been convicted of that offence by the court in X.

[The memorandum explains the thinking underlying subsection (2): see paragraph 30. By importing the law of the sentencing country it will be possible for orders against parents to be made in appropriate cases, if that law so provides.]

Remission

8.—(1) A transferred offender sentenced to a term of imprisonment—

(a) shall be credited with any remission of that term to which he had become entitled at the date of his transfer in accordance with the law in that behalf in force in the scheduled country; and

(b) shall be eligible to earn remission as if he had been sentenced to a term of imprisonment of the same length by a court in X.

(2) Any remission of imprisonment referred to in subsection (1)(a) shall be liable to forfeiture for a disciplinary offence as if it were remission earned by virtue of subsection (1)(b).

Aftercare

9. A transferred offender shall, on release from prison, be subject to the like compulsory supervision as if he had been sentenced to a term of imprisonment of the same length by a court in X as a person sentenced to such a term by that court would have been so subject.

[A clause to this effect will only be required in those countries in which there is provision for aftercare following custodial sentences.]

Parole

10.—(1) The Parole Act and the Board established thereby shall respectively apply to, and have jurisdiction over, a transferred offender as if he had been convicted and sentenced to a term of imprisonment of the same length by a court in X.

(2) A transferred offender serving a term of imprisonment who is not at the date of his transfer on parole shall become eligible for parole on the date on which he would have become eligible for parole if he had been convicted and sentenced in X.

(3) If a transferred offender has, before his transfer, been released on parole in the scheduled country in which he was convicted and sentenced and that parole was subsequently revoked, then the time spent on parole shall count towards the completion of his sentence in X.

(4)(a) A transferred offender who is, at the date of his transfer, on parole in the scheduled country in which he was convicted and sentenced shall be deemed for all purposes to have been convicted and sentenced in X and to have been released on parole by the Parole Board, notwithstanding that a person actually so convicted and sentenced might not be eligible for parole.

(b) A breach of any condition on which parole was granted shall render the offender liable to the same consequences as if he had been released on parole by the Parole Board on condition and he had broken that condition.

[This clause will have to be adapted to the legislative and administrative provisions relating to parole.]

Pardon 11. Where the prerogative of mercy has been exercised in a scheduled country in respect of an offender, the sentence on whom is being enforced in X, that offender shall no longer be detained in prison or otherwise, or be subject to parole or to supervision on probation by reason only of the sentence imposed for the offence for which pardon has been granted; and any disqualification or any monetary sanction which is being or has been enforced shall be cancelled or removed, or repaid to the offender, as the case may be.

Persons of unsound mind 12.(1) If a person who is a citizen of X, having been charged with an offence but whether or not convicted of that offence, has been ordered to be detained by a court in a scheduled country because he has been found to be incapable by reason of mental illness to stand his trial or to have been for the same reason, incapable in law of being convicted of that offence, that person may be transferred at the request of the government of that country, notified by the responsible authority of that country, and with the agreement of the Government of X to X, and section 3(3) shall not apply to such person.

(2) A person transferred by virtue of subsection (1) shall be detained in prison or in such institution as the Minister may direct, and he shall be deemed for all purposes to be a person ordered to be so detained by a court in X in like circumstances.

(3) Section 5 shall apply in relation to a person to whom this section applies as if he were a transferred offender.

[The terminology of this clause will require adaptation to local usage.]

Offenders in lawful custody during transfer 13. An offender shall, while he is being transferred, be deemed to be in the lawful custody of the person duly authorised to conduct him and to be subject to the same restraint and, in the event of misbehaviour, to the same punishment as if he were in prison in X and as if the person conducting him were a prison officer; and if the offender escape or attempt to escape from such custody the offender and any person aiding or attempting to aid him in such escape shall be liable on conviction to the same penalty as if such escape or attempt to escape were an escape or an attempt to escape from such a prison.

Transfer of offenders from X 14. A foreign offender may request transfer to a scheduled country by applying to the Minister and if his transfer is agreed by the Government of X and by the government of that country the offender may be conveyed to that country and delivered to the authority designated by that government.

Rules 15. The Minister may make rules—
(a) prescribing the form to be completed by an offender who wishes to be transferred to X;
(b) prescribing the form and manner in which a foreign offender may apply to the Minister for transfer to a scheduled country;
(c) prescribing the procedure to be followed for the enforcement in X of a sentence imposed on an offender in a scheduled country; and
(d) generally for the carrying into effect of the purposes of this Act.

SCHEDULE

(Section 2)

Countries with which arrangements have been made.

26-27 ELIZABETH II

26-27 ELIZABETH II

CHAPTER 9

CHAPITRE 9

An Act to implement treaties on the transfer of persons found guilty of criminal offences

[Assented to 22nd March, 1978]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the *Transfer of Offenders Act*.

INTERPRETATION

Definitions

"Canadian offender"
«délinquant canadien»

2. In this Act,
"Canadian offender" means a Canadian citizen, within the meaning of the *Citizenship Act*, irrespective of age, who has been found guilty of an offence and is subject to supervision either in confinement or at large by reason of parole, probation or any other form of supervision without confinement, in a foreign state;

"criminal offence"
«infraction...»

"criminal offence" means an offence against an Act of Parliament;

"foreign offender"
«délinquant étranger»

"foreign offender" means a citizen or a national of a foreign state, irrespective of age, who has been found guilty of a criminal offence and is subject to supervision either in confinement or at large by reason of parole, probation or any other form of supervision without confinement, in Canada;

"foreign state"
«État...»

"foreign state" means a state, the name of which is set out in the schedule, with

Loi de mise en œuvre des traités sur le transfèrement des personnes reconnues coupables d'infractions criminelles

[Sanctionnée le 22 mars 1978]

Sa Majesté, sur l'avis et du consentement du Sénat et de la Chambre des communes du Canada, décrète:

TITRE ABRÉGÉ

Titre abrégé

1. La présente loi peut être citée sous le titre: *Loi sur le transfèrement des délinquants*.

INTERPRÉTATION

Définitions

«délinquant canadien»
"Canadian..."

2. Dans la présente loi,
«délinquant canadien» désigne un citoyen canadien au sens de la *Loi sur la citoyenneté*, quel que soit son âge, qui a été reconnu coupable d'une infraction et qui est sous surveillance soit en détention, soit en raison d'une ordonnance de probation, d'une libération conditionnelle ou d'une autre forme de liberté surveillée, dans un État étranger;

«délinquant étranger» désigne un citoyen d'un État étranger, quel que soit son âge, qui a été reconnu coupable d'une infraction criminelle et qui est sous surveillance soit en détention, soit en raison d'une ordonnance de probation, d'une libération conditionnelle ou d'une autre forme de liberté surveillée, au Canada; cette expression comprend aussi les nationaux;

«délinquant étranger»
"foreign offender"

«État étranger» désigne un État, dont le nom est mentionné à l'annexe, avec lequel le Canada a conclu un traité sur le transfèrement des délinquants;

«État étranger»
"foreign state"

	which Canada has entered into a treaty on the transfer of offenders;	«infraction criminelle» désigne une infraction à une loi du Parlement;	«infraction criminelle» "criminal..."
"Minister" «Ministre»	"Minister" means the Solicitor General of Canada;	«Ministre» désigne le solliciteur général du Canada;	«Ministre» "Minister"
"penitentiary" «pénitenciers»	"penitentiary" has the meaning assigned to that term by the <i>Penitentiary Act</i> ;	«pénitencier» a le sens que la <i>Loi sur les pénitenciers</i> lui donne;	«pénitencier» "penitentiary"
"prison" «prison»	"prison" means a place of confinement other than a penitentiary as defined in the <i>Penitentiary Act</i> .	«prison» désigne un lieu de détention à l'exclusion d'un pénitencier au sens de la <i>Loi sur les pénitenciers</i> .	«prison» "prison"

TRANSFER OF CANADIAN OFFENDERS TO CANADA

TRANSFÈREMENT DES DÉLINQUANTS CANADIENS AU CANADA

Transfer	3. A Canadian offender who requests transfer to Canada pursuant to a treaty on the transfer of offenders entered into between Canada and the foreign state in which he was found guilty shall be dealt with in accordance with this Act.	3. Un délinquant canadien qui demande son transfèrement au Canada en vertu d'un traité sur le transfèrement des détenus conclu entre le Canada et l'État étranger où il a été reconnu coupable doit être traité conformément à la présente loi.	Transfèrement
Effect of transfer	4. Where a Canadian offender is transferred to Canada, his finding of guilt and sentence, if any, by a court of the foreign state from which he is transferred is deemed to be a finding of guilt and a sentence imposed by a court of competent jurisdiction in Canada for a criminal offence.	4. Lorsqu'un délinquant canadien est transféré au Canada, sa déclaration de culpabilité et sa sentence, s'il y en a une, par un tribunal de l'État étranger d'où il est transféré sont présumées être celles qu'un tribunal canadien compétent lui aurait imposées pour une infraction criminelle.	Conséquence du transfèrement
Idem	5. (1) Section 617 of the <i>Criminal Code</i> does not apply in respect of the offence of which a Canadian offender has been found guilty in the foreign state from which he is transferred and his finding of guilt and his sentence, if any, are not subject to any appeal or to any other form of review in Canada.	5. (1) L'article 617 du <i>Code criminel</i> ne s'applique pas à l'infraction dont un délinquant canadien a été reconnu coupable dans l'État étranger d'où il est transféré; sa déclaration de culpabilité et sa sentence, s'il y en a une, ne sont sujettes à aucun appel ou autre forme de révision au Canada.	Idem
Evidence	(2) On the transfer of a Canadian offender, documents supplied by the foreign state from which the offender is transferred setting out the finding of guilt and, where the offender has been sentenced, the sentence imposed are, if they purport to be signed by a judicial official or director of a place of confinement of the foreign state, in the absence of evidence to the contrary, evidence of the facts alleged therein without proof of the signature or official character of the person by whom they purport to be signed.	(2) Lors du transfèrement d'un délinquant canadien, les documents que fournit l'État étranger d'où le délinquant est transféré énonçant sa déclaration de culpabilité et, si une sentence lui a été infligée, sa sentence et apparemment signés par un fonctionnaire judiciaire ou le directeur d'un établissement de détention de l'État étranger font preuve, en l'absence de preuve contraire, des faits qui y sont allégués, sans qu'il soit nécessaire de faire la preuve de la signature ni de la qualité officielle de la personne qui les a apparemment signés.	Preuve

Transfer	<p>6. (1) Where the Minister is informed on behalf of a foreign state that a Canadian offender has requested transfer to Canada and that the responsible authority in that state agrees to such transfer, the Minister shall cause the foreign state to be advised whether he approves or disapproves the transfer of such offender and, where he approves the transfer, he shall make the necessary arrangements therefor.</p>	<p>6. (1) Lorsque le Ministre est avisé par un État étranger qu'un délinquant canadien demande son transfèrement au Canada et que l'autorité compétente de cet État l'a approuvé, il informe l'État étranger de son acceptation ou de son refus de ce transfèrement et, en cas d'acceptation, il prend les mesures nécessaires à ce transfèrement.</p>	Transfèrement
Approval of a province	<p>(2) Where a Canadian offender who has requested transfer to Canada has been sentenced to imprisonment for less than two years, the Minister shall not approve such transfer unless</p> <p>(a) the authority responsible for the administration of prisons in the province in which the Canadian offender would be detained agrees to the transfer; and</p> <p>(b) the Canadian offender completes the prescribed form.</p>	<p>(2) Le Ministre ne peut accepter le transfèrement au Canada d'un délinquant canadien condamné à moins de deux ans d'emprisonnement à moins que</p> <p>a) l'accord des autorités responsables de l'administration des prisons dans la province où ce délinquant serait détenu ne soit obtenu; et</p> <p>b) ce délinquant ne remplisse le formulaire réglementaire.</p>	Accord de la province
TRANSFER OF CANADIAN OFFENDERS UNDERGOING IMPRISONMENT		TRANSFÈREMENT DES DÉLINQUANTS CANADIENS EN DÉTENTION	
Where committed	<p>7. A Canadian offender transferred to Canada while undergoing imprisonment shall be detained in a penitentiary if he has been sentenced to imprisonment for two years or more or in a prison in any other case.</p>	<p>7. Un délinquant canadien transféré au Canada alors qu'il purgeait une peine d'emprisonnement est détenu dans un pénitencier s'il a été condamné à deux ans ou plus d'emprisonnement ou dans une prison dans les autres cas.</p>	Endroit
Eligibility for parole	<p>8. Subject to section 9, a Canadian offender transferred to Canada becomes eligible for parole at a date determined by the National Parole Board as being the date, so far as can be ascertained by the Board, at which he would have been eligible for parole had he been convicted and his sentence imposed by a court in Canada.</p>	<p>8. Sous réserve de l'article 9, un délinquant canadien transféré au Canada devient admissible à la libération conditionnelle à la date que la Commission nationale des libérations conditionnelles détermine, en autant que faire se peut, comme étant celle à laquelle il le deviendrait s'il avait été déclaré coupable et condamné par un tribunal canadien.</p>	Admissibilité à la libération conditionnelle
Idem	<p>9. A Canadian offender convicted of an offence that, if it had been committed in Canada, would have constituted murder within the meaning of section 212 or 213 of the <i>Criminal Code</i> and transferred to Canada becomes eligible for parole when ten years have elapsed after his conviction unless the documents supplied by the foreign state in which he was convicted and sentenced show to the satisfaction of the Minister that</p>	<p>9. Un délinquant canadien coupable d'une infraction qui, si elle avait été perpétrée au Canada, aurait été un meurtre au sens des articles 212 ou 213 du <i>Code criminel</i> et transféré au Canada devient admissible à la libération conditionnelle à l'expiration d'un délai de dix ans à compter de sa déclaration de culpabilité sauf si les documents que fournit l'État étranger où il fut déclaré coupable et condamné établissent, à la satisfaction du</p>	Idem

the circumstances in which the offence was committed were such that, if it had been committed in Canada after July 26, 1976, it would have been first degree murder within the meaning of section 214 of the *Criminal Code*, in which case he becomes eligible for parole when fifteen years have elapsed after his conviction.

Temporary absence and day parole for murderers

10. Notwithstanding the *Penitentiary Act* and the *Parole Act*, a Canadian offender transferred to Canada who was convicted of an offence that, if it had been committed in Canada, would have constituted murder within the meaning of section 212 or 213 of the *Criminal Code* may not be granted

(a) an absence without escort under the *Penitentiary Act*,
(b) a day parole under the *Parole Act*, or
(c) an absence with escort for humanitarian or rehabilitative reasons under the *Penitentiary Act* that has not been approved by the National Parole Board, until the expiration of all but three years of the period during which he is ineligible for parole.

Remission

11. (1) A Canadian offender transferred to Canada

(a) shall be credited with any time toward completion of his sentence that was credited to him at the date of his transfer by the foreign state in which he was convicted and sentenced; and
(b) is eligible to earn remission as if he had been committed to custody on the date of his transfer pursuant to a sentence imposed by a court in Canada.

Forfeiture

(2) Any time referred to in paragraph (1)(a) except time actually spent in confinement pursuant to the sentence imposed by the foreign court is subject to forfeiture for a disciplinary offence as if it were remission credited under the *Penitentiary Act* or the *Prisons and Reformatories Act*.

Ministre, que les circonstances entourant la perpétration de l'infraction sont telles que, si elle avait été perpétrée au Canada après le 26 juillet 1976, il se serait agi d'un meurtre au premier degré au sens de l'article 214 du *Code criminel*; dans un tel cas, il ne devient admissible à la libération conditionnelle qu'à l'expiration d'un délai de quinze ans à compter de sa déclaration de culpabilité.

10. Par dérogation à la *Loi sur les pénitenciers* et à la *Loi sur la libération conditionnelle de détenus*, un délinquant canadien transféré au Canada qui a été déclaré coupable d'une infraction qui, si elle avait été perpétrée au Canada, aurait été un meurtre au sens des articles 212 ou 213 du *Code criminel* n'a pas droit

a) à une absence sans escorte en vertu de la *Loi sur les pénitenciers*,
b) à une libération conditionnelle de jour en vertu de la *Loi sur la libération conditionnelle de détenus*, ou
c) à une absence sous escorte pour des motifs humanitaires ou de redressement moral en vertu de la *Loi sur les pénitenciers* qui n'aurait pas été approuvée par la Commission nationale des libérations conditionnelles

avant l'expiration du délai préalable à sa libération conditionnelle, exception faite des trois dernières années de ce délai.

Absence temporaire ou libération de jour pour les meurtriers

11. (1) Un délinquant canadien transféré au Canada

a) bénéficie des remises de peine que lui a accordées l'État étranger où il fut déclaré coupable et condamné calculées au jour de son transfèrement; et
b) peut bénéficier d'une réduction de peine comme s'il était incarcéré le jour de son transfèrement conformément à une condamnation prononcée par un tribunal canadien.

Réduction de peine

(2) Les remises de peine mentionnées à l'alinéa (1)a) sauf celles accordées pour le temps véritablement passé en détention conformément à la sentence que lui a imposée le tribunal étranger sont sujettes à déchéance pour une infraction disciplinaire comme s'il s'agissait de réductions de peine acquises en

Déchéance

Mandatory supervision	<p>12. A Canadian offender transferred to Canada is, on his release from custody, subject to mandatory supervision pursuant to section 15 of the <i>Parole Act</i> if a sentence imposed by a foreign court was imposed after July 31, 1970 and would, pursuant to section 659 of the <i>Criminal Code</i>, have resulted in committal of the Canadian offender to a penitentiary if it had been imposed on him in Canada.</p>	<p>vertu de la <i>Loi sur les pénitenciers</i> ou de la <i>Loi sur les prisons et les maisons de correction</i>.</p>	<p>12. Un délinquant canadien transféré au Canada est, lors de sa mise en liberté, assujéti à une surveillance obligatoire conformément à l'article 15 de la <i>Loi sur la libération conditionnelle de détenus</i> si une sentence que lui a infligée un tribunal étranger l'a été après le 31 juillet 1970 et aurait entraîné son incarcération dans un pénitencier, conformément à l'article 659 du <i>Code criminel</i>, si elle lui avait été infligée au Canada.</p>	Surveillance obligatoire
<p>TRANSFER OF CANADIAN OFFENDERS ON PAROLE</p>		<p>TRANSFÈREMENT DES DÉLINQUANTS CANADIENS EN LIBÉRATION CONDITIONNELLE</p>		
Jurisdiction of National Parole Board	<p>13. Subject to section 15, the National Parole Board has jurisdiction over Canadian offenders transferred to Canada.</p>	<p>13. Sous réserve de l'article 15, la Commission nationale des libérations conditionnelles a compétence à l'égard des délinquants canadiens transférés au Canada.</p>	Compétence de la Commission nationale des libérations conditionnelles	
Effect of revocation	<p>14. Where the parole granted by a foreign state to a Canadian offender who is transferred to Canada is revoked, he is entitled to count toward completion of his sentence any time spent on parole after October 14, 1977 and immediately prior to his transfer to Canada, in the foreign state from which he was transferred.</p>	<p>14. Lorsque la libération conditionnelle qu'un État étranger a accordé à un délinquant canadien transféré au Canada est révoquée, ce dernier peut calculer pour l'achèvement de sa peine le temps passé en libération conditionnelle, après le 14 octobre 1977, immédiatement avant son transfèrement au Canada, dans l'État étranger d'où il est transféré.</p>	Effet de la révocation	
Jurisdiction of provincial parole boards	<p>15. A provincial parole board has jurisdiction over a Canadian offender transferred to Canada</p> <p>(a) who is not on parole at the time of his transfer; and</p> <p>(b) who is detained in a provincial institution where that parole board has jurisdiction over other prisoners.</p>	<p>15. Une commission provinciale des libérations conditionnelles a compétence à l'égard d'un délinquant canadien transféré au Canada</p> <p>a) qui n'est pas en libération conditionnelle au moment de son transfèrement; et</p> <p>b) qui est incarcéré dans un établissement provincial à l'intérieur duquel cette commission a compétence à l'égard de d'autres prisonniers.</p>	Compétence des commissions provinciales des libérations	
<p>TRANSFER OF CANADIAN OFFENDERS ON PROBATION OR EQUIVALENT</p>		<p>TRANSFÈREMENT DES DÉLINQUANTS CANADIENS SOUMIS À UNE ORDONNANCE DE PROBATION OU À DES CONDITIONS ÉQUIVALENTES</p>		
Probation order	<p>16. (1) Where a Canadian offender is transferred to Canada while at large under conditions equivalent to those that would prevail if he had been found guilty in Canada and released on conditions prescribed in a probation order,</p>	<p>16. (1) Lorsqu'un délinquant canadien est, au moment de son transfèrement au Canada, en liberté en vertu de conditions équivalentes à celles qui auraient pu être prescrites dans une ordonnance de probation s'il avait été reconnu coupable au Canada,</p>	Ordonnance de probation	

(a) a magistrate, within the meaning of that term for the purposes of Part XVI of the *Criminal Code*, may, on application of the Canadian offender or of the Attorney General of the province in which the offender resides, modify the conditions on which the offender is entitled to be at large in Canada in any manner provided by subsection 664(3) of the *Criminal Code* as if he were subject to a probation order; and

(b) a wilful violation of the conditions on which he is entitled to be at large is an offence under subsection 666(1) of the *Criminal Code*.

a) un magistrat, au sens de la Partie XVI du *Code criminel*, peut, à la demande du délinquant ou du procureur général de sa province de résidence, modifier les conditions en vertu desquelles il a droit d'être en liberté au Canada de la façon prévue au paragraphe 664(3) du *Code criminel* comme s'il était soumis à une ordonnance de probation; et

b) le défaut volontaire de se conformer aux conditions en vertu desquelles il a droit d'être en liberté est une infraction au paragraphe 666(1) du *Code criminel*.

Powers of the court

(2) On conviction of a Canadian offender of an offence under subsection 666(1) of the *Criminal Code*, the convicting court may, if the offender was transferred to Canada while at large under circumstances equivalent to those that would prevail if he had been found guilty in Canada and released on conditions prescribed in a probation order,

(2) La cour qui déclare un délinquant canadien coupable d'une infraction au paragraphe 666(1) du *Code criminel* peut, si le délinquant a été transféré au Canada alors qu'il était en liberté en vertu de conditions équivalentes à celles qui auraient pu être prescrites dans une ordonnance de probation s'il avait été reconnu coupable au Canada,

Pouvoirs de la cour

(a) if it imposes imprisonment, revoke the entitlement of the Canadian offender to be at large, or

a) si elle impose une peine d'emprisonnement, révoquer le droit du délinquant d'être en liberté, ou

(b) make changes in or additions to the conditions on which he is entitled to be at large or extend the application of those conditions for a further period not exceeding one year,

b) modifier les conditions en vertu desquelles il a le droit d'être en liberté, en ajouter d'autres ou en prolonger la durée pour une période supplémentaire maximale d'un an,

and shall inform the offender of its decision.

et doit aviser le délinquant de sa décision.

Limitation

(3) Subsection 664(4) of the *Criminal Code* does not apply to a Canadian offender transferred to Canada while at large under conditions equivalent to those that would prevail if he had been found guilty in Canada and released on conditions prescribed in a probation order.

(3) Le paragraphe 664(4) du *Code criminel* ne s'applique pas au délinquant canadien transféré au Canada alors qu'il était en liberté en vertu de conditions équivalentes à celles qui auraient pu être prescrites dans une ordonnance de probation s'il avait été reconnu coupable au Canada.

Réserve

JUVENILE DELINQUENTS

JEUNES DÉLINQUANTS

Committal of juvenile delinquents

17. Where a Canadian offender transferred to Canada

17. Lorsqu'un délinquant canadien transféré au Canada

Incarcération

(a) is committed to a prison in a province, and

a) est incarcéré dans une prison dans une province, et

(b) would have been a juvenile delinquent within the meaning of the *Juvenile Delinquents Act*, as that Act applied in the province at the time of his transfer, had

b) aurait été considéré comme un jeune délinquant au sens de la *Loi sur les jeunes délinquants*, tel que cette loi s'appliquait dans la province au moment de son trans-

the offence for which he was convicted and sentenced been committed in Canada, an official designated for the purpose by the Lieutenant Governor in Council of the province where the offender is detained may transfer him to any institutional facility for young persons in which a juvenile delinquent may be held but no person so transferred shall be detained by reason only of the sentence imposed by the foreign court beyond the date such sentence would terminate.

PARDON

Pardon

18. Where a foreign state has exercised the power to pardon a Canadian offender transferred to Canada, that offender shall no longer be subject to incarceration or other form of supervision by reason only of the sentence imposed for the offence in respect of which the pardon was granted.

TRANSFER OF FOREIGN OFFENDERS FROM CANADA

Transfer

19. A foreign offender may request transfer to a foreign state by applying to the Minister and may be transferred if the conditions set out in this Act are met.

Obligation to provide information

20. The Minister shall, on request by a foreign offender, provide him with a copy of the treaty on the transfer of offenders entered into between Canada and a foreign state designated in the request.

Delivery

21. Where the transfer of a foreign offender to a foreign state has been approved by the parties concerned, he shall be delivered to the responsible authority designated by that foreign state.

Transfer from prisons

22. No foreign offender may be transferred from a prison in a province to a foreign state without the approval of the authority responsible in the province for the administration of prisons.

Schedule

23. The Governor in Council may, by order, amend the schedule by adding thereto or deleting therefrom the name of any foreign state that has entered into or terminated

l'infraction, si l'infraction pour laquelle il a été déclaré coupable et condamné avait été perpétrée au Canada, un fonctionnaire désigné à cette fin par le lieutenant-gouverneur en conseil de la province où il est détenu peut le transférer dans un établissement de détention de jeunes délinquants; il ne peut y être gardé, en vertu uniquement de la sentence imposée par le tribunal étranger, au-delà de la date où cette sentence prend fin.

PARDON

Pardon

18. Lorsqu'un État étranger accorde un pardon à un délinquant canadien transféré au Canada, ce délinquant ne doit plus être emprisonné ou soumis à une autre forme de surveillance en raison de la sentence imposée pour l'infraction à l'égard de laquelle le pardon a été accordé.

TRANSFÈREMENT DES DÉLINQUANTS ÉTRANGERS DU CANADA

Transfèrement

19. Un délinquant étranger peut demander son transfèrement vers un État étranger en en faisant la demande au Ministre et peut être transféré si les conditions prévues à la présente loi sont remplies.

Obligation de fournir une copie du traité

20. Le Ministre doit, sur demande d'un délinquant étranger, lui fournir une copie d'un traité sur le transfèrement des délinquants conclu entre le Canada et un État étranger qu'il précise dans sa demande.

Remise

21. Le délinquant étranger est remis aux autorités compétentes que désigne l'État étranger, une fois que les parties concernées ont accepté son transfèrement vers cet État étranger.

Transfèrement d'une prison

22. Un délinquant étranger ne peut être transféré d'une prison dans une province vers un État étranger sans l'accord de l'autorité responsable de l'administration des prisons dans la province.

Annexe

23. Le gouverneur en conseil peut, par décret, modifier l'annexe en y ajoutant ou en retranchant le nom des États étrangers qui ont conclu ou dénoncé un traité avec le Canada sur le transfèrement des délinquants.

a treaty with Canada on the transfer of offenders.

REGULATIONS

Regulations

24. The Governor in Council may make regulations

- (a) prescribing the form and manner in which a foreign offender may apply to the Minister for transfer to a foreign state;
- (b) prescribing the form to be completed by a Canadian offender who, if transferred to Canada, will be detained in a prison; and
- (c) generally for the carrying out of the purposes of this Act.

COMMENCEMENT

Coming into force

25. This Act shall come into force on a day to be fixed by proclamation.

SCHEDULE

1. United States
2. Mexico

RÈGLEMENTS

Règlements

24. Le gouverneur en conseil peut établir des règlements

- a) prescrivant la façon dont un délinquant étranger peut demander au Ministre son transfèrement vers un État étranger;
- b) prescrivant le formulaire que doit remplir un délinquant canadien qui, s'il était transféré au Canada, serait incarcéré dans une prison; et
- c) généralement pour l'application de la présente loi.

ENTRÉE EN VIGUEUR

25. La présente loi entre en vigueur au jour fixé par proclamation.

Entrée en vigueur

ANNEXE

1. États-Unis
2. Mexique