CHAPTER 1

HISTORICAL BACKGROUND

§1-1 Introduction

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§1-1 Introduction

Speaking in 1825 for a unanimous Supreme Court, Chief Justice Marshall stated: “The Courts of no country execute the penal laws of another. . . .”¹ One hundred fifty-one years later, in a markedly changed world, the United States signed a Treaty on the Execution of Penal Sentences with Mexico pursuant to which it agreed to execute penal sentences handed down by Mexican courts against United States nationals and to transfer Mexican nationals convicted in the United States to Mexico for execution of their United States sentences.² Since then, the United States has negotiated and signed similar bilateral prisoner transfer treaties with eight additional countries³ and multi-


Treaty on Execution of Penal Sentences, United States–Panama, 32 U.S.T. 1565; T.I.A.S. No. 9787 (Signed January 11, 1979; entered into force June 27, 1980) [hereafter “Panamanian Treaty”]. Reprinted in Appendix D.


lateral treaties in the Council of Europe4 and the Organization of American States.5 The United States also has entered into prisoner transfer relations pursuant to subsidiary agreements negotiated in accordance with the Compacts of Free Association with its former Pacific Island Trust Territories of the Marshall Islands, the Federated States of Micronesia, and Palau.6 As of January 1, 2010, the United States had prisoner transfer treaties in force with a total of 77 countries. In several instances, the United States and other countries—Canada, Mexico, and Panama—can choose from among bilateral

4 Convention on Transfer of Sentenced Persons, T.I.A.S. No. 10824 (Signed by the United States March 21, 1983) [hereafter “Council of Europe Convention”]. Reprinted in Appendix E to this Part. The Convention entered into force for the United States, France, Spain and Sweden on July 1, 1985. It enters into force for other countries “the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval by those countries.” Article 18(3).

As of January 1, 2010, the Convention has been signed and ratified by 63 countries in addition to the United States.

5 Inter-American Convention on Serving Criminal Sentences Abroad. The Convention was signed by the United States on January 10, 1995, and ratified by it on May 25, 2001. As of January 1, 2010, the Convention was in force for Belize, Brazil, Canada, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, the United States, Uruguay, and Venezuela. The United States has bilateral prisoner transfer treaties with three of these countries—Canada, Mexico, and Panama. Also, five of these countries are parties to the Council of Europe Convention on the Transfer of Sentenced Persons—Canada, Chile, Costa Rica, Panama, and Venezuela. The Inter-American Convention is reprinted in Appendix F.


A separate agreement, which shall come into effect simultaneously with this Compact, shall be concluded between the Government of the United States and the Governments of [the Marshall Islands, the Federated States of Micronesia, and Palau regarding mutual assistance and cooperation in law enforcement matters including . . . the transfer of prisoners. The separate agreement shall have the force of law. In the United States, . . . the laws of the United States governing the transfer of prisoners, including 18 U.S.C. 4100-4115, shall be applicable to the transfer of prisoners under the separate agreement.

The separate agreement relating to the transfer of prisoners between the United States and Governments of the Marshall Islands and the Federated States of Micronesia was signed on October 1, 1982, and entered into force with respect to the Marshall Islands on October 21, 1986, and with respect to the Federated States of Micronesia on November 3, 1986. The separate agreement relating to the transfer of prisoners between the United States and Palau was signed January 10, 1986, and entered into force on October 1, 1994. See Appendix N.