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As described in Chapter 3, all prisoner transfer treaties to which the United States is a party, or which it has signed, contain the same basic elements: requirements of eligibility for transfer; methods of initiating transfer; requirement of consent by the sentencing country, the administering country, and the transferee; jurisdiction over attacks on the transferred conviction and sentence; responsibility for determination of the length of incarceration and supervised release and determination of conditions of service of the transferred sentence; and responsibility for administrative matters such as reports and costs. In addition, some treaties deal with other matters such as the rights of transferees after transfer and the transit of transferees through the territory of the parties. This chapter discusses the basic elements of these treaties from the standpoint of transfer from the United States. The full texts of the treaties, the Council of Europe’s Convention on the Transfer of Sentenced Persons, and the Inter-American Convention on Serving Criminal Sentences Abroad are reprinted in Appendices D, E, and F.
§6-1 Eligibility of Prisoner for Transfer

(1) Requirement of Nationality of Administering Country

As described in §3-1(1), supra, all United States bilateral prisoner transfer treaties, with the exception of the Hong Kong Agreement, require that, to be eligible to transfer, an offender must be a national of the country which will administer the sentence. The Convention on the Transfer of Sentenced Persons, however, permits an administering country, through a declaration filed with the Council of Europe, to define the term “national” for purposes of the Convention.1 Pursuant to this provision the Bahamas, Denmark, Finland, Hungary, Iceland, the Netherlands, Norway, Sweden, and the United Kingdom and the British territories to which the Convention has been extended that accord substantial rights to permanent resident aliens, have filed declarations providing that they consider certain alien domiciliaries as “nationals” for purposes of the Convention. Other countries that become parties to the Convention may follow their lead. Because the Convention entered into force for the United States subsequent to the enactment of the provision of the United States prisoner transfer implementing legislation that limits transfers from the United States to nationals and citizens of the administering country, the Convention provision on nationality takes precedence over the United States statutory provision to the extent they are inconsistent.2 Similarly, because most permanent residents of Hong Kong are Chinese citizens, there is no such thing as Hong Kong citizenship, and the prisoner transfer agreement is with Hong Kong, not China, the Hong Kong Agreement, where Hong Kong is the “receiving Party”, requires only that the sentenced person be a permanent resident of Hong Kong.3

(2) Requirement of Dual Criminality

All United States prisoner transfer treaties require that, to be eligible to transfer from the United States, the act or offense of which an offender was convicted in the United States would have to be an offense under the laws of the administering country if it were committed within its jurisdiction.4

(3) Requirement of Finality of Judgment and Sentence

As set forth in §3-1(3), supra, all United States prisoner transfer treaties condition eligibility for transfer on the finality of the offender’s conviction and sentence. Thus, an offender cannot transfer from the United States if he has

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1 Art. 3(4).
2 See M. Abbell, Extradition to and from the United States, §2-3(2).
3 Hong Kong Agreement, Art. 4(1)(b).
4 See §3-1(2), supra.