

PRISONER TRANSFER

**Treaty Between the
UNITED STATES OF AMERICA
and PERU**

Signed at Washington July 6, 1979



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89-497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

“ . . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

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PERU

Prisoner Transfer

Treaty signed at Washington July 6, 1979;
Transmitted by the President of the United States of America to the Senate December 20, 1979 (S. Ex. II, 96th Cong., 2d Sess.);
Reported favorably by the Senate Committee on Foreign Relations March 14, 1980 (S. Ex. Rep. No. 96-36, 96th Cong., 2d Sess.);
Advice and consent to ratification by the Senate March 25, 1980;
Ratified by the President April 3, 1980;
Ratified by Peru July 9, 1980;
Ratifications exchanged at Lima July 21, 1980;
Proclaimed by the President August 9, 1980;
Entered into force July 21, 1980.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

CONSIDERING THAT:

The Treaty between the United States of America and the Republic of Peru on the Execution of Penal Sentences, signed at Washington on July 6, 1979, the text of which Treaty, in the English and Spanish languages, is hereto annexed;

The Senate of the United States of America by its resolution of March 25, 1980, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Treaty;

The Treaty was ratified by the President of the United States of America on April 3, 1980, in pursuance of the advice and consent of the Senate, and was duly ratified on the part of the Republic of Peru;

It is provided in Article XII of the Treaty that the Treaty shall enter into force on the date on which instruments of ratification are exchanged;

The instruments of ratification of the Treaty were exchanged at Lima on July 21, 1980; and accordingly the Treaty entered into force on that date;

Now, THEREFORE, I, Jimmy Carter, President of the United States of America, proclaim and make public the Treaty, to the end that it be observed and fulfilled with good faith on and after July 21, 1980, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have signed this proclamation and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this ninth day of August in the year of our Lord one thousand nine hundred eighty and [SEAL] of the Independence of the United States of America the two hundred fifth.

JIMMY CARTER

By the President:

WARREN CHRISTOPHER

Acting Secretary of State

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

The United States of America and the Republic of Peru,
agreeing on the necessity of mutual cooperation in combatting
crime insofar as the effects of such crime extend beyond their
borders and with the purpose of assuring the better administration
of justice through adequate procedures that facilitate the social
rehabilitation of prisoners;

Hereby resolve to enter into a Treaty on the Execution of
Penal Sentences in the following terms:

ARTICLE I

1. Sentences imposed in the Republic of Peru on nationals of the United States of America may be served in penal institutions of the United States of America or under the supervision of its authorities in accordance with the provisions of this Treaty.

2. Sentences imposed in the United States of America on nationals of the Republic of Peru may be served in penal institutions of the Republic of Peru or under the supervision of its authorities in accordance with the provisions of this Treaty.

ARTICLE II

For the purposes of this Treaty:

1. "Transferring State" means the party from which the offender is to be transferred.

2. "Receiving State" means the party to which the offender is to be transferred.

3. "Offender" means a person who in the territory of one of the parties is serving a sentence not subject to further appeal or is on parole or suspended sentence.

ARTICLE III

This Treaty shall apply only under the following conditions:

1. That the offense for which the offender was convicted and sentenced is one which would be punishable in the Receiving State; provided, however, that this condition shall not be interpreted so as to require that the offense described in the laws of both States be identical in those matters which do not affect the nature of the crime.

2. That the offender be a national of the Receiving State.
3. That the offender has not been sentenced to the death penalty nor convicted of a purely military offense.
4. That at least six months of the offender's sentence remain to be served at the time of petition.
5. That the sentence be final, that any appeal procedures have been completed, and that there be no extraordinary review procedures pending at the time of invoking the provisions of this Treaty.

ARTICLE IV

The parties will designate authorities to perform the functions provided in this Treaty.

ARTICLE V

1. Each transfer of American offenders shall be initiated by a written petition presented by the Embassy of the United States of America in Peru to the Ministry of Foreign Relations.
2. Each transfer of Peruvian offenders shall be initiated by a written petition presented by the Embassy of the Republic of Peru in the United States of America to the Department of State.
3. If the Transferring State considers the request to transfer the prisoner appropriate and the offender gives his express consent, the Transferring State will communicate its approval of such request to the Receiving State so that, once internal arrangements have been completed, the transfer of the offender may be effected.

4. Delivery of the offender by the authorities of the Transferring State to those of the Receiving State shall occur at a place agreed upon by both parties. The Receiving State will be responsible for the custody and transport of the offender from the Transferring State.

5. In making the decision concerning the transfer of an offender and with the objective that the transfer should contribute effectively to his social rehabilitation, the authority of each party will consider, among other factors, the seriousness of the crime, previous criminal record, if any, health status, and the ties that the offender may have with the society of the Transferring State and the Receiving State.

6. In cases where a Peruvian national has been sentenced by a state of the United States of America, the approval of the appropriate state authorities for his transfer will be required as well as that of the federal authority.

7. The Transferring State shall furnish to the Receiving State a certified copy of the sentence or judgment relating to the offender. When the Receiving State considers such information insufficient, it may request at its expense, principal portions of the trial record or such additional information as it deems necessary.

8. When the Transferring State does not approve, for whatever reason, the transfer of an offender, it shall communicate this decision to the Receiving State without delay and without the necessity of explaining the reason.

9. Before the transfer, the Transferring State shall afford an opportunity to the Receiving State, if it so desires, to verify through an officer designated by the laws of the Receiving State, that the

offender's consent to the transfer has been given voluntarily and with full knowledge of the legal consequences thereof.

10. The Receiving State shall not be entitled to any reimbursement for the expenses incurred by it in the transfer of an offender or the completion of his sentence.

ARTICLE VI

1. An offender delivered for execution of sentence under this Treaty may not again be detained, tried or sentenced in the Receiving State for the same offense for which the sentence was imposed by the Transferring State.

2. 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.

3. The authorities of each party may request reports indicating the status of confinement 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.

ARTICLE VII

The Transferring State shall retain exclusive jurisdiction regarding the sentences imposed and any procedures that provide for revision or modification of the sentences pronounced by its courts.

The Transferring State also shall retain the power to pardon or grant amnesty or clemency to the offender. The Receiving State, upon being informed of any decision in this regard, will promptly put such measures into effect.

ARTICLE VIII

1. This Treaty shall also be 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 on the kind of treatment to be accorded such persons upon transfer. Consent for the transfer of such persons shall be obtained from a legally authorized representative.

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

By special agreement between the parties for specific cases, persons accused of a crime who the medico-legal authorities of the Transferring State have duly determined are suffering from a mental aberration or mental illness and for such reason are declared incompetent to stand trial, may be transferred to the country of which they are nationals so that they may be cared for in specialized institutions.

ARTICLE X

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 the transfer of offenders will give advance notice to the other party of such transfer.

ARTICLE XI

In order to carry out the purposes of this Treaty, each party shall take the necessary legislative measures and shall establish adequate administrative procedures so that a sentence imposed by a Transferring State will have legal effect in the Receiving State.

ARTICLE XII

1. The present Treaty shall be subject to ratification and shall enter into force on the date on which instruments of ratification are exchanged.^[1] The exchange of instruments of ratification shall take place at Lima.

2. The present Treaty shall remain in force for two years, and shall be automatically renewed for additional periods of two years unless one of the parties gives written notice to the other of its intention to terminate the Treaty at least six months prior to the expiration of any two-year period.

¹ July 21, 1980.

DONE in duplicate, in the English and Spanish languages, each language version being equally authentic, at Washington, this 6th day of July, 1979.

FOR THE UNITED STATES OF AMERICA:

FOR THE REPUBLIC OF PERU:

Hume Horan ^[1]

A. Arias-Schreiber ^[2]

¹ Hume Horan.

² A. Arias-Schreiber.

**TRATADO ENTRE LOS ESTADOS UNIDOS DE AMERICA
Y LA REPUBLICA PERUANA
SOBRE EL CUMPLIMIENTO DE CONDENAS PENALES**

Los Estados Unidos de América y la República Peruana, habiendo convenido en la necesidad de cooperar mutuamente en la lucha contra la criminalidad en la medida en que los efectos de ésta trascienden sus fronteras, y animadas por el propósito de asegurar la mejor administración de la justicia mediante la adopción de métodos adecuados que faciliten la rehabilitación social de reos;

Por el presente, resuelven concertar un Tratado sobre la Ejecución de Sentencias Penales de la forma siguiente:

ARTICULO I

1. Las sentencias impuestas en los Estados Unidos de América a nacionales de la República Peruana podrán ser cumplidas en establecimientos penales de la República Peruana o bajo la vigilancia de sus autoridades, de conformidad con las disposiciones del presente Tratado.

2. Las sentencias impuestas en la República Peruana a nacionales de los Estados Unidos de América podrán ser cumplidas en establecimientos penales de los Estados Unidos de América o bajo la vigilancia de sus autoridades, de conformidad con las disposiciones del presente Tratado.

ARTICULO II

Para los fines del presente Tratado:

1. "Estado Trasladante" significa la Parte de la cual el reo habrá de ser trasladado.

2. "Estado Receptor" significa la Parte a la cual el reo habrá de ser trasladado.

3. "Reo" significa una persona que, en el territorio de una de las Partes esté cumpliendo una sentencia no sujeta a más apelaciones, o que se encuentre en libertad vigilada o en régimen de condena condicional.

ARTICULO III

El presente Tratado se aplicará únicamente bajo las siguientes condiciones:

1. Que el delito por el cual el reo fue declarado culpable y condenado sea punible en el Estado Receptor; en la inteligencia de que, no obstante, esta condición no sea interpretada en el sentido de requerir que el delito descrito por las leyes de ambos Estados sea idéntico en aquellas cuestiones que no afecten la naturaleza del delito.

2. Que el reo sea nacional del Estado Receptor.

3. Que el reo no haya sido condenado a la pena de muerte, ni haya sido declarado culpable de un delito exclusivamente militar.

4. Que la parte de la condena del reo que quede por cumplirse en el momento de hacerse la solicitud sea por lo menos de seis meses.

5. Que la sentencia sea definitiva, que se hayan agotado todos los recursos de apelación y que no queden pendientes procedimientos extraordinarios de examen en el momento de invocar las disposiciones del presente Tratado.

ARTICULO IV

Las Partes designarán las autoridades que realizarán las funciones dispuestas en el presente Tratado.

ARTICULO V

1. Cada traslado de reos peruanos se iniciará mediante una petición hecha por escrito y presentada por la Embajada de la República Peruana en los Estados Unidos de América al Departamento de Estado.

2. Cada traslado de reos estadounidenses se iniciará mediante una petición hecha por escrito y presentada por la Embajada de los Estados Unidos de América en la República Peruana al Ministerio de Relaciones Exteriores.

3. Si el Estado Trasladante considera apropiada la petición de traslado del prisionero y éste da su consentimiento expreso, el Estado Trasladante comunicará al Estado Receptor su aprobación de tal solicitud, de modo que una vez que se hayan completado los arreglos internos, se pueda efectuar el traslado del reo.

4. La entrega del reo por las autoridades del Estado Trasladante a las del Estado Receptor se efectuará en el lugar en que convengan ambas Partes. El Estado Receptor será responsable de la custodia del reo y de su transporte desde el Estado Trasladante.

5. Al tomar la decisión relativa al traslado de un reo y de conformidad con el objetivo de que el traslado contribuya positivamente a su rehabilitación social, la autoridad de cada una de las Partes considerará, entre otros factores, la gravedad del delito, los antecedentes penales del reo, de tenerlos, su estado de salud y los vínculos que pueda tener con la sociedad del Estado Trasladante y la del Estado Receptor.

6. En los casos en que un nacional peruano haya sido sentenciado por un Estado de los Estados Unidos de América, se requerirá la aprobación de las autoridades competentes del Estado en cuestión, así como la de las autoridades del Gobierno Federal.

7. El Estado Trasladante suministrará al Estado Receptor copia certificada de la sentencia o condena relativa al reo. Si el Estado Receptor considera que tal información es insuficiente, podrá solicitar a su costo, las principales partes de las actas del juicio u otra información que se estimen necesarias.

8. Cuando el Estado Trasladante no apruebe, por cualquier motivo, el traslado de un reo, comunicará su decisión sin demora al Estado Receptor; sin necesidad de expresión de causa.

9. Antes de efectuarse el traslado, el Estado Trasladante brindará al Estado Receptor si este así lo solicita, la oportunidad de verificar, mediante un funcionario designado conforme las leyes del Estado Receptor, que el consentimiento del reo al traslado fue dado de manera voluntaria y con el pleno conocimiento de las consecuencias legales inherentes al mismo.

10. El Estado Receptor no tendrá derecho a ningún reembolso por gastos contraídos con motivo del traslado del reo o el cumplimiento de su condena.

ARTICULO VI

1. Un reo entregado para el cumplimiento de una condena en virtud del presente Tratado no podrá ser detenido, enjuiciado o condenado nuevamente en el Estado Receptor por el mismo delito que motivó la condena impuesta por el Estado Trasladante.

2. Salvo cuando se disponga de otro modo en el presente Tratado, la condena de un reo trasladado se cumplirá conforme a las leyes y procedimientos del Estado Receptor, inclusive la aplicación de cualesquiera disposiciones relativas a la reducción de períodos de encarcelamiento mediante la libertad vigilada, libertad bajo palabra, sentencia condicional o algún otro método.

3. Las autoridades de ambas Partes podrán solicitar informes sobre el estado que guarde el cumplimiento de las condenas de todos los reos trasladados conforme al presente Tratado, incluyendo en particular los relativos a la excarcelación (libertad preparatoria o libertad absoluta) de cualquier reo. Cualquiera de las Partes podrá solicitar en cualquier momento, un informe especial sobre el estado que guarde el cumplimiento de una condena individual.

ARTICULO VII

El Estado Trasladante mantendrá jurisdicción exclusiva sobre la condena impuesta y cualesquiera otros procedimientos que dispongan la revisión o modificación de las sentencias dictadas por sus tribunales. El Estado Trasladante retendrá asimismo la facultad de indultar o conceder amnistía o clemencia al reo. El Estado Receptor, al recibir aviso de cualquier decisión al respecto, deberá adoptar con prontitud las medidas que corresponden.

ARTICULO VIII

1. El presente Tratado podrá asimismo aplicarse a personas sujetas a supervisión u otras medidas conforme a las leyes de una de las Partes relacionadas con infractores menores de edad. Las Partes, de conformidad con sus leyes, acordarán el tipo de tratamiento que se aplicará a tales personas al ser trasladadas. Para el traslado se obtendrá el consentimiento de un representante legalmente autorizado.

2. Nada de lo estipulado en el presente Tratado se interpretará en el sentido de limitar la facultad que las Partes puedan tener, independientemente del presente Tratado, para conceder o aceptar el traslado de un infractor menor de edad u otra clase de infractor.

ARTICULO IX

Por acuerdo especial entre las Partes para casos determinadós, las personas acusadas de un delito, respecto de las cuales las autoridades forenses del Estado Trasladante hayan determinado debidamente que sufren de una enfermedad o anomalía mental y por lo tanto se las considera incapacitadas para ser procesadas, podrán ser trasladadas al país del cual son nacionales, de modo que se las atienda en instituciones especializadas.

ARTICULO X

Si cualquiera de las Partes concierta un acuerdo con algún otro Estado para el cumplimiento recíproco de condenas penales, la otra Parte prestará su cooperación facilitando el tránsito de reos por su territorio, en virtud de tal acuerdo. La Parte que proyecte realizar el traslado de reos avisará con antelación a la otra Parte acerca del mismo.

ARTICULO XI

Con objeto de cumplir los propósitos del presente Tratado, cada una de las Partes adoptará las medidas legislativas necesarias y establecerá los procedimientos administrativos adecuados para que la condena impuesta por el Estado Trasladante tenga efecto legal dentro del Estado Receptor.

ARTICULO XII

1. El presente Tratado estará sujeto a ratificación y entrará en vigor en la fecha del canje de los instrumentos de ratificación. El canje de los instrumentos de ratificación tendrá lugar en la ciudad de Lima, Perú.

2. El presente Tratado permanecerá en vigor por dos años y se renovará automáticamente por períodos adicionales de dos años, a menos que una de las Partes notifique por escrito a la otra Parte su intención de dar por terminado el Tratado, por lo menos seis meses antes de la expiración de cualquier período de dos años.

Hecho en Washington D.C. el 6 de julio de 1979, en duplicado, en los idiomas español e inglés, siendo ambas versiones igualmente auténticos.

POR LOS ESTADOS UNIDOS DE AMERICA POR LA REPUBLICA PERUANA

HUME HORAN

A. ARIAS SCHREIBER