

TREATY WITH THE REPUBLIC OF PERU ON THE
EXECUTION OF PENAL SENTENCES

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A TREATY BETWEEN THE UNITED STATES OF AMERICA AND
THE REPUBLIC OF PERU ON THE EXECUTION OF PENAL SEN-
TENCES, SIGNED AT WASHINGTON ON JULY 6, 1979



DECEMBER 20, 1979.—Treaty was read the first time and, together with
the accompanying papers, referred to the Committee on Foreign Rela-
tions and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

59-118 O

WASHINGTON : 1979

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *December 20, 1979.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty between the United States of America and Peru on the Execution of Penal Sentences, which was signed at Washington on July 6, 1979.

I transmit also, for the information of the Senate, the report of the Department of State with respect to the Treaty.

The Treaty would permit citizens of either nation who had been convicted in the courts of the other country to serve their sentence in their home country; in each case the consent of the offender as well as the approval of the authorities of the two Governments would be required.

This Treaty is significant because it represents an attempt to resolve a situation which has inflicted substantial hardships on a number of citizens of each country and has caused concern to both Governments. The Treaty is similar to those currently in force with Bolivia, Canada and Mexico. I recommend that the Senate give favorable consideration to this Treaty at an early date.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, D.C., November 30, 1979.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit a Treaty between the United States of America and the Republic of Peru on the Execution of Penal Sentences which was signed at Washington on July 6, 1979. I recommend that the Treaty be transmitted to the Senate for its advice and consent to ratification.

The Treaty is similar to those currently in force with Bolivia, Canada and Mexico. It is also consistent with the treaties on the subject with Panama and Turkey that are pending before the Senate. It would permit citizens of either nation who had been convicted in the courts of the other country to serve their sentences in their home country; in each case the consent of the offender as well as the approval of the authorities of the two Governments would be required.

The Treaty is intended to relieve the special hardships which fall upon prisoners incarcerated far from home, to improve the prospects for rehabilitation of offenders, and also to relieve the strains that can arise in diplomatic and law enforcement relations between the two countries because of the imprisonment of a number of each country's nationals in the institutions of the other. It constitutes part of an ongoing effort to improve relations between the two countries.

The basic terms of the Treaty are as follows: The Treaty generally applies to a prisoner who has been convicted and sentenced for an offense punishable as a crime in both the sentencing country and the country to which the offender is to be transferred provided that the prisoner is a national of the latter country, the sentence is final, no appeal is pending, and the provisions of the sentence, other than the period of detention, have been complied with. However, three categories of prisoners are excluded from transfer under the Treaty: (1) offenders who have been sentenced to death, (2) offenders who have been convicted of military offenses, and (3) those having less than six months to serve when the petition for their transfer is made (Article III).

Each transfer is contingent upon the consent of both the state which sentenced the prisoner (the Transferring State) and the state which is to receive and confine him (the Receiving State). The decision to transfer is to be made on the basis of the whole record of the prisoner and the authorities' estimate as to the likelihood that the transfer would be beneficial (Article V). In each case, the express consent of the prisoner concerned would also have to be obtained; there can be no involuntary transfer under this Treaty.

When a prisoner has been transferred, the following procedures govern his treatment: The original sentence carries over to his new confinement, preserving deductions for good behavior in prison and during pre-trial confinement. The Transferring State retains the power to grant pardon or amnesty. With these exceptions, the execution of the sentence is to be carried out according to the rules and practices prevailing in the state to which he is transferred (Article VI (2)). In particular, the rules of the Receiving State as to parole will determine the date at which the prisoner is released from confinement. Any collateral attack on the sentence must proceed through the courts of the country which imposed the sentence (Article VII).

The Treaty may be implemented under Public Law 95-144; no new legislation will be proposed.

Respectfully submitted,

CYRUS VANCE.

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. 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.

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

J. Diabla

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