

No. 25276

**SPAIN
and
PERU**

Treaty on the transfer of persons sentenced to penalties involving deprivation of liberty or security measures involving deprivation of liberty, and of minors subject to special treatment. Signed at Lima on 25 February 1986

Authentic text: Spanish.

Registered by Spain on 14 September 1987.

**ESPAGNE
et
PÉROU**

Traité relatif au transfèrement des personnes condamnées à des peines privatives de liberté ou frappées de mesures de sécurité privatives de liberté, et à celui des mineurs soumis à un traitement spécial. Signé à Lima le 25 février 1986

Texte authentique : espagnol.

Enregistré par l'Espagne le 14 septembre 1987.

[TRANSLATION — TRADUCTION]

TREATY¹ BETWEEN THE KINGDOM OF SPAIN AND THE REPUBLIC OF PERU ON THE TRANSFER OF PERSONS SENTENCED TO PENALTIES INVOLVING DEPRIVATION OF LIBERTY OR SECURITY MEASURES INVOLVING DEPRIVATION OF LIBERTY, AND OF MINORS SUBJECT TO SPECIAL TREATMENT

The Kingdom of Spain and the Republic of Peru, having agreed on the necessity of mutual co-operation in combating crime insofar as the effects of such crime extend beyond their borders and with the purpose of ensuring the better administration of justice through the adoption of adequate methods to facilitate the social rehabilitation of prisoners and the special treatment of minors.

Hereby resolve to conclude a Treaty on the transfer of persons sentenced to penalties involving deprivation of liberty or security measures involving deprivation of liberty, and of minors subject to special treatment, with the following provisions:

Article I. 1. Sentences to penalties involving deprivation of liberty or security measures involving deprivation of liberty imposed in the Kingdom of Spain 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.

2. Sentences to penalties involving deprivation of liberty or security measures involving deprivation of liberty imposed in the Republic of Peru on Spanish nationals may be served in penal institutions of the Kingdom of Spain 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 either Party, has been convicted of a crime and has been definitively sentenced to a penalty involving deprivation of liberty or security measures involving deprivation of liberty, including supervision without confinement or conditional release.

Article III. This Treaty shall apply only under the following conditions:

1. That the offence for which the offender was convicted and sentenced is one which would be punishable as a crime in the Receiving State, it being understood, however, that this condition shall not be interpreted so as to require that the crime described in the laws of both States be identical in those matters or aspects which do not affect the nature of the crime.
2. That the offender be a national of the Receiving State.

¹ Came into force on 9 June 1987, the date of the exchange of the instruments of ratification, which took place at Madrid, in accordance with article XIII (1).

3. That the offender has not been sentenced to the death penalty, unless such sentence has been commuted.
4. That the offender has not been convicted of a strictly military offence.
5. That at least six months of the offender's sentence remain to be served at the time of petition.
6. That the sentence be final or definitive and therefore 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.
7. That the provisions of the sentence, other than the period of detention, have been complied with.

Article IV. The transfer of the offender may be refused if he has not paid or guaranteed payment, to the satisfaction of the transferring State, of the fines, legal expenses, civil damages and pecuniary penalties of any kind for which he is liable under the terms of the sentence.

Article V. 1. The Parties shall designate authorities to perform the functions provided for in this Treaty.

2. The competent authorities of the transferring State shall officially inform all offenders who are nationals of the other State and who have received a final sentence, of the option available to them, under this Treaty, of obtaining a transfer to the receiving State for the purpose of serving their sentence or the security measure involving deprivation of liberty, and shall also inform them of the possible legal consequences of such a transfer.

Article VI. 1. Each transfer of Spanish offenders shall be initiated by a written petition presented by the Embassy of the Kingdom of Spain in the Republic of Peru to the Ministry for Foreign Affairs.

2. Each transfer of Peruvian offenders shall be initiated by a written petition presented by the Embassy of the Republic of Peru in the Kingdom of Spain to the Ministry for Foreign Affairs.

3. If the transferring State considers the request to transfer the prisoner appropriate, and the offender gives his express consent, the transferring State shall communicate its approval of such request to the receiving State so that, once internal arrangements have been completed, the transfer may be effected.

4. The transfer of the offender by the authorities of the transferring State to those of the receiving State shall be effected at a place agreed upon by the Parties. The receiving State shall 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 positively to his social rehabilitation, the authority of each Party shall consider, among other factors, the seriousness of the crime, the offender's previous criminal record, if any, the State of his health, and the ties that he may have with the society of the transferring State and of the receiving State.

6. The transferring State shall furnish to the receiving State a certified copy of the judgment convicting the offender, indicating that it is a final sentence. If the receiving State considers such information to be insufficient, it may request, at its own

expense, the main parts of the record of the court proceedings or such other information as it may deem necessary.

Any documents delivered by one State to the other State under the terms of this Treaty shall be exempt from the formalities of legalization, unless otherwise requested.

7. The transferring State shall retain absolute discretion to refuse the transfer of an offender without being required to state its reasons. Such a decision shall be communicated without delay to the receiving State.

8. Before the transfer is carried out, the transferring State shall afford an opportunity to the receiving State, if it so desires, to verify, through an officer designated in accordance with 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.

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

Article VII. An offender delivered for execution of a sentence under this Treaty may not again be detained, tried or sentenced in the receiving State for the same offence for which the sentence was imposed by the transferring State.

Article VIII. The transferring State alone shall retain jurisdiction regarding the sentence imposed and any other procedures that provide for revision or modification of the sentences pronounced by its courts. Either Party may request that the other Party grant a pardon, amnesty or clemency to the offender; the transferring State shall, however, retain the power to grant a pardon, amnesty or clemency to the offender. Upon receiving notice of any decision in that regard, the receiving State shall promptly take such measures as may be required under its legislation on the subject.

Article IX. The execution of the sentence of the transferred offender shall be effected in accordance with the rules of the prison system of the receiving State. In no case may a sentence involving deprivation of liberty imposed by the transferring State be modified as regards either its nature or its duration.

Article X. 1. This Treaty shall also apply to persons subject to supervision or other measures in accordance with the legislation of one of the Parties relating to minors. The Parties shall determine, in accordance with their legislation, what type of treatment shall be applied to such persons upon their transfer. Consent to the transfer must be given by a legally authorized representative.

2. None of the provisions of this Treaty shall be interpreted as limiting any powers which the Parties may have, independently of this Treaty, to grant or accept the transfer of a minor.

Article XI. In order to carry out the purpose of this Treaty, each Party shall adopt the necessary legislative measures and shall establish adequate administrative procedures so that sentences involving deprivation of liberty and security measures involving deprivation of liberty imposed by the transferring State shall have legal effect within the receiving State.

Article XII. This Treaty may be applied to the enforcement of sentences involving deprivation of liberty or security measures involving deprivation of liberty imposed either before or after the entry into effect of this Treaty.

Article XIII. 1. This Treaty shall be subject to ratification and shall enter into force on the date on which the instruments of ratification are exchanged. The exchange of instruments of ratification shall take place at Madrid.

2. This Treaty shall have an indefinite duration. Either Party may terminate it by giving written notice. The termination shall take effect six months after such notice has been given.

DONE at Lima, on 25 February 1986, in two original copies, both being equally authentic.

For the Kingdom of Spain:

[Signed]

JOSÉ LUIS DICENTA
Ambassador of Spain

For the Republic of Peru:

[Signed]

HUBERT WIELAND
Ambassador
Deputy Minister and Secretary-General
for Foreign Affairs