AN ANALYSIS OF THE PHILIPPINE-INDONESIAN EXTRADITION TREATY

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I. INTRODUCTION

Scope, Aim and Methodology

This paper aims to delve into an in-depth analysis of the Philippine-Indonesian Extradition Treaty.

The framework from which we shall treat the subject matter is based on the general principles which have been the experience and practice in the international community.

We shall treat the subject by first stating the general principles which we shall use as frame of reference to suciently discuss the Treaty. From there, we shall go to a discussion of the substantive provisions of the Treaty, dissecting the provisions in the light of the prevalent doctrines. Then we shall go into the procedure by which this Treaty is sought to be implemented in the Philippines.

The Need for Extradition

Modern means of transportation make it easy for criminal offenders to escape from one country to another to avoid apprehension. It is, however, in the interest of every country that offenders should be brought to justice. The suppression of crime should be the concern of every state regardless of the place where it is committed, as the welfare of civilized communities demand that criminals be punished. Crimes are not merely an infraction of a command which a particular society chooses to give; they sap the foundations of social life; they are an outrage upon humanity at large, and all human beings ought to contribute to repress them. Their commission is encouraged when a criminal enjoys immunity as soon as he leaves the territory of his country. Every civilized state must afford to another assistance towards the apprehension of criminals.[1]

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[1] HALL, A TREATISE ON INTERNATIONAL LAW 68 (8th ed., 1924).

Generally speaking, the exercise of jurisdiction by a state in international law is co-extensive with its territory. The Philippines, in recognition of this rule, has made its penal laws[2] subject to certain exceptions, applicable only to crimes committed within its boundary. Its law enforcing arm cannot be extended so as to reach the violators of its penal laws in the territorial domain of another state. The only means by which it could be afforded redress is through extradition.

Extradition Defined

By extradition is meant the delivery, to accredited authorities, of criminal fugitives or persons accused of crime committed in one country, upon the request of the government of the country in which the crime was committed, by the government of the country in which they have sought refuge. This is not considered to be an obligation under international law but is one proceeding from treaty obligations, or one that is granted as a matter of comity and mutual convenience.[3]

Extradition has been defined as "the formal surrender of a person by a state to another state for prosecution and punishment."[4] Some authorities define extradition as the surrender by a state, of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other state which, being competent to try and punish him, demands his surrender.[5]

Viewed as a treaty, extradition is defined as an international agreement by which countries bind themselves to extradite criminals who have committed specified offenses.[6]

Extradition Distinguished From Deportation, Expulsion

Extradition is the surrender to another country of one accused of an offense against its laws, there to be tried, and, if found guilty, punished. Deportation is the removing of an alien out of the country simply because his presence is deemed inconsistent with the public welfare, and without any punishment being imposed or contemplated, either under the laws of the country out of which he is sent, or under those of the country to which he is taken.[7]

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[2] REV. PEN. CODE, art. 2.
[3] STOCKTON, OUTLINES OF INTERNATIONAL LAW 189-190 (1914).
[4] ABAD SANTOS, INTERNATIONAL LAW 415 (971).
[5] Terlinden v. Ames 184 U.S. 270 (1902).
[6] READERS DIGEST ENCYCLOPEDIA DICTIONARY.
[7] HYDE, INTERNATIONAL LAW 1013 (1945).

Deportation is not for the benefit of any foreign government or for bringing fugitives to justice which is the basis of extradition. Deportation is for the protection of the state that expels.

The order of deportation is not a punishment for crime. It is not a banishment in the sense in which that word is often applied to the expulsion of a citizen from his country by way of punishment. It is a method of enforcing the return to his own country of an alien who has not complied with the conditions upon the performance of which the Government of the nation, acting within its constitutional authority and through the proper departments, has determined that his continuing to reside there shall depend.[8]

Expulsion is a police measure, having for its object the purging of the state of obnoxious foreigners. It is a preventive, not a penal process, and it cannot be substituted for criminal prosecution and punishment by judicial procedure.[9]

Classification of Extradition

Extradition may be classified into interstate extradition and international extradition.

In interstate extradition the parties are member states of a Federal State. This is recognized and widely practised in the United States, a good example of a federal state. Among the states in the U.S. the procedure is called rendition proceedings. Americal jurisprudence is rich in decided cases on the matter of interstate extradition.

In international extradition, on the other hand, the parties are sovereign states. Thus, if the Philippines demands from the United States or from any other state the extradition of a fugitive, such case is one of international extradition.

For purposes of this paper, the discussion will be confined to international extradition in relation to the Philippines.

Legal Basis of Extradition

As early as 1625 Grotius recognized the social necessity and hence the duty under natural law that a state either punish fugitive criminals or surrender them to the state whose laws were violated.[10] This moral duty to extradite did not, however, become a legal obligation until states began to enter into treaties provid-

[8] U.S. v. Go-Siaco, 12 Phil. 490, 494 (1909).
[9] Forbes v. Chuoco Tiaco and Crossfield, 16 Phil. 534, 567 (1910).
[10] FENWICK, INTERNATIONAL LAW 388 (4th ed.).

ing for the surrender of particular fugitives. However, in the second half of the 19th century, the urgent need of offsetting the greater facilities for the escape of criminals provided by modern methods of transportation led to the conclusion of extradition treaties of a greater nature, covering stipulated crimes and applicable to any offender and towards the opening decade of the 20th century the scope of these treaties had widened greatly.

Professor Brierly points out that extradition is based upon mutual faith of states in the legal system of each other and is aimed at promoting international cooperation in the suppression of crime.[11]

Nature of the Right

There is no obligation upon a government, under the law of nations, to surrender fugitive criminals to a foreign power.[12] It is the present doctrine in most states that the extradition of a fugitive criminal cannot be granted in the absence of specific legal authority.

Inasmuch as extradition is primarily governed by treaty stipulations peculiar to the needs of the contracting states, each treaty on the matter should be treated independently of each other. Such being the case it is highly impossible to formulate any general rule of international law on extradition. However, upon analysis of these treaties, along with the practice of states, we may find certain common conditions and characteristics which may perhaps be loosely called "fundamental principles of extradition". Generally speaking they are the following:

1. A state is not under any legal obligation to surrender a fugitive from justice in the absence of an extradition treaty.

2. The person extradited can be tried by the demanding state only for offenses charged in the extradition treaty, unless the surrendering state offers no objection. This is called the principle of specialty.

3. Political offenses are not extraditable.

4. The crime allegedly committed must have been perpetrated within the jurisdiction of the demanding state.

5. Extradition proceeding must be prosecuted by the foreign government in the public interest, and may not be used by a private

[11] Report of the League of Nations Committee of Experts, AM. J. INT'L. 248 (1926).

[12] U.S. v. Rauscher, 119 U.S. 407 (1886).

party for private vengeance or personal purpose. The demanding state must act through its head or his duly-authorized delegate, otherwise, the state of asylum shall have the right to refuse demand.

History of the Law of Extradition in the Philippines

As early as February 6, 1905, the surrender of fugitive offenders from the Philippines had been included in the treaties of Great Britain with the U.S. when the Philippines was still a colony of the United States.[13] The Act of 1905 of the U.S. Congress provided for the necessary machinery for the execution in the Philippine Islands of the extradition treaties of the U.S. applicable thereto.[14] It "shall apply to the Philippine Islands for the arrest and removal therefrom of any fugitives from justice charged with the commission within the jurisdiction of any foreign government of any of the crimes provided for by treaty between the United States and such foreign nation, and for the delivery by a foreign government of any person accused of crime committed within the jurisdiction of the Philippine Islands.[15]

There was an attempt to conclude an extradition treaty with the United States but this failed. The Philippine panel was composed of (the then Chief Legal Counsel of the Department of Justice, now Court of Appeals Justice) B.S. de la Fuente, Assistant Secretary for Legal Affairs of the Department of National Defense Col. Samuel Soriano and Assistant Secretary for Legal Affairs of the Ministry of Foreign Affairs Jose Plana. However, the parties could not agree on important details like the retroactivity of the treaty and the extradition of nationals, among others. Because of the stalemate, it was never signed by the parties and was shelved. It is noteworthy at this juncture to state that the Philippines should have first concluded its extradition treaty with the United States because of the "special relations" obtaining between the two nations.

Against this backdrop, we now come to the first extradition treaty concluded by the Philippines as a sovereign state.

The idea of an extradition treaty between the Philippines and Indonesia was initially proposed by the Indonesian Minister of Justice Mochtar Kasumaatmadja to the Philippine Minister of Justice Vicente Abad Santos when they first met at the Conference on the Law of the Sea sometime in 1974-1975. Thus, it was the

[13] ParliamentaryPaper (1914), Cd. 7149 D.F.A.T.S. (1914).
[14] 33 U.S. St. at I. 698.
[15] Act No. 44 (1905).

Office of the Minister of Justice that negotiated the extradition treaty. It is believed that the Office of the Minister of Justice is the proper executive arm to negotiate the treaty since this involves crimes.

Atty. Pedro Marasigan was given the task by the Philippine Minister of Justice to draft the extradition treaty. He analyzed 17 extradition treaties in Europe and the USA and embodied the salient features of these extradition treaties in what is now the Philippine-Indonesian Extradition Treaty.

When the two panels met again, they exchanged drafts of the extradition treaty. Later on, the Indonesian panel moved to adopt the draft prepared by the Philippine panel in toto. The Indonesian panel suggested the use of the term 'crime' instead of 'extraditable' offense' which was used in the body of the Philippine draft. The Philippine panel readily accepted the change. Thus, the Philippine draft prepared by Atty. Marasigan is the extradition treaty in force. Minister of Justice Abad Santos signed for the Government of the Republic of the Philippines while Minister of Justice Mochtar Kasumaatmadja signed for the Government of the Republic of Indonesia on 10 February 1976 at Jakarta, Indonesia.

On the same date, the two countries "desiring to avoid any ambiguity in the interpretation of that part of the Extradition Treaty which touches on its territorial application have agreed on a Protocol that the Republic of Indonesia is the sole owner of an island known as Las Palmas (P. Miangas) as a result of an arbitral award made on April 4, 1928 (The USA and the Netherlands)". In his Penal Sciences and Criminology lecture on the Philippine-Indonesian Extradition Treaty in February, 1976, Professor Bienvenido C. Ambion of the College of Law noted that such a provision is a surplusage or an *ex abundante cautela* in the extradition treaty.

The Philippine-Indonesian Treaty has an official text in Filipino in addition to Indonesian and English.

On October 25, 1976, after having carefully compared their instruments of ratification and having found them to be in due form, Acting Minister of Foreign Affairs Jose D. Ingles signed for the Government of the Philippines and Indonesian Ambassador to the Philippine Sri Bima Ariotedjo signed for the Government of the Republic of Indonesia. This Protocol of exchange was

necessary to determine the date of effectivity of the extradition treaty.[16]

It is noteworthy to mention that from the date of effectivity of the Treaty on October 25, 1976 up to the present time, there has been no case which calls for the application of the Treaty.

II. TEXTUAL ANALYSIS

A. CONDITIONS OF EXTRADITION

Extraditable Crimes

There are two types of extradition treaties according to the definition of extraditable crimes. The conservative or old type contains a listing of crimes covered by the extradition treaty. The modern or Montevideo type contains no enumeration of crimes but covers all crimes punishable in both signatory states.

The Philippine-Indonesian treaty, like most bilateral extradition, treaties, falls under the conservative or "list" type of treaty, i.e., one which carries a list of extraditable crimes.[17] The list includes seventeen (17) crimes with the qualification that these crimes are punishable by the laws of both contracting parties by a possible penalty of death or denial of liberty for a period exceding one year.[18] It seems that all other offenses not included in such enumeration are by necessary implication excluded from the operation of the "list" type of treaties and that therefore one of the contracting nations cannot, by virtue of the provisions of the treaty and as a matter of right, demand of the other nation the surrender of a person charged with an offense not specified in the treaty between the two nations. By express provision of the Treaty, however, extradition may also be granted "at the discretion of the requested Party in respect of any other crimes for

[16] Philippine-Indonesian Treaty (1976).

[17] See Harvard Research in International Law, Extradition, AM. J. INT'L. L. 243 (1935).

[18] Article II of the Extradition Treaty between the Philippines and Indonesia enumerates the following crimes: (1) murder; parricides; infanticide; and homicide; (2) rape, indecent assault; unlawful sexual acts with or upon minors under age specified by the penal laws of both Contracting parties; (3) abduction; kidnapping (4) mutilation; physical injuries; frustrated murder or frustrated homicide; (5) illegal or arbitrary detention; (6) slavery, servitude; (7) robbery, theft; (8) estafa, malversation; swindling, fraud, cheating; (9) extortion, threats, coercion; (10) bribery, corruption, graft; (11) falsification; perjury; (12) forgery, counterfeiting; (13) smuggling; (14) arson, destruction of property; (15) hijacking, piracy; mutiny; (16) crimes against the laws relating to narcotics, dangerous or prohibited drugs or prohibited chemicals; (7) crimes against the laws relating to firearms, explosives or incendiary devices.

which it can be granted according to the laws of both contracting parties.[19] Even in the absence of this provision it must not be supposed that a state cannot surrender to another state a fugitive criminal. In fact even in the absence of an extradition treaty, states, as a matter of courtesy or subservience on the part of sovereign towards another, surrender refugees.[20]

The practice of enlisting the extraditable offenses in a bipartite treaty has been criticized as suffering from certain inherent shortcomings. *Firstly,* in the absence of uniform penal codes in the different countries with varying systems of municipal law, it becomes difficult to find definition of offenses acceptable to both the parties and which may also meet with uniform interpretation in the courts of the contracting parties. *Secondly,* whenever the list of extraditable offenses has to be altered to meet changing conditions, a new treaty becomes necessary involving both an executive and legislative action on the contracting parties.

As regards the first criticism this has ben answered in part with the adoption of the principle of double criminality in most bilateral extradition treaties including the Philippine-Indonesian treaty. (This is treated in detail in succeeding discussion.) With regard to the second objection, it is to be noted that this is not so much of a difficulty in the case of the Philippines and Indonesia both of which, during the adoption of the treaty up to to present time, are both under "constitutional authoritarian rule" whereby the executive exercises exclusive power of treaty-making.[21]

The general difficulties mentioned above account for the failure to develop a general convention on extradition up to this time. It has been suggested both by the Committee of Experts appointed by the League of Nations[22] and the Harvard Research[23] that if the states should decide to adopt a general convention on extradition, the most convenient method would be to grant extradition for any act punishable with a certain prescribed severity in the two states concerned (or in the states demanding extradition) and not to attempt a detailed list of extradition crimes. On the other hand, it has suggested that codification might very well adopt a minimum

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[19] Extradition Treaty with Indonesia, art. II, par. c.

[20] Harvard Research, Draft Convention on Extradition, Introductory Comment, *supra,* note 17.

[21] In the case of the Philippines, treaty-making power is solely vested in the President-Prime Minister under the 1973 Constitution as amended in October, 1976.

[22] Report of Prof. Brierly to the Committee of Experts appointed by the League of Nations, AM. J. INT'L. L. Special Supplement 245 (1926).

[23] See "Draft Convention on Extradition", *Harvard Research in International Law,* scheme AM. J. INT'L. L. Suppl. 76-77 (1935).

list of extradition crimes acceptable in most cases, leaving other states free to extend the list according to their special needs.

The geographical proximity[24] between the Philippines and Indonesia should have been a major factor considered in coming out with the broad range of penalty as criterion for determining the extraditable crimes under the treaty i.e., minimum of one year imprisonment to a maximum of death. There is no distinction made between a person accused of a crime and a person convicted of a crime.[25] A "fugitive criminal" is defined under Article II of the Treaty as "a person who is being proceeded against or has been charged with, found guilty or convicted of any of the crimes mentioned therein". In certain bilateral treaties a minimum possible penalty is required when the person claimed is only accused of a crime whereas, in case a person claimed has been convicted, a lower actual penalty suffices.[26]

It is expressly stipulated in the Treaty that "a crime commenced prior to the date this Treaty enters into force but completed after the date of this Treaty enters into force shall be extradited pursuant to this Treaty". Thus, anterior crimes are excepted only if they are completed before the date this Treaty enters into force i.e., October 25, 1976. In some extradition treaties signed by the United States, anterior crimes are excepted. In some others there is no provision excepting anterior crimes. It has been held that an extradition treaty which operates retroactively is not unconstitutional as being in contravention of the constitutional prohibition of the passing of any bill of attainder or ex post facto law.[27]

As to the persons extraditable, the degree of their participation in the crime is immaterial. Article II par. b states that "extradition shall also be granted for participation in any of the crimes mentioned in this Article, not only as principals or accomplices, but also as accessories, as well as for attempt to commit or conspiracy to commit any of the aforementioned crimes," so long as such participation attempt or conspiracy is punishable under the laws of both contracting parties by deprivation of liberty exceeding one year".

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[24] The Philippines and Indonesia have signed the following relevant agreements: Agreement on Border Crossing Control, March 29, 1963; Treaty of Friendship, June 21, 1951; Agreement on Immigration, July 4, 1956.

[25] Philippine-Indonesian Extradition Treaty, II, sec. A.

[26] HARVARD RESEARCH, *op. cit., supra,* note 23 at 78.

[27] *In re* Neely, 103 F. 626 (1900).

PLACE OF THE COMMISSION OF THE CRIME

Treaties of extradition provide for the surrender of persons charged with crimes committed within the "jurisdiction" of one of the contracting parties, who may be found within the "territory" of another. These words have generally been construed to mean "territorial jurisdiction."[28]

The Philippine-Indonesian Treaty embodies this general feature of extradition treaties in Article I which states that

> Each Contracting Party agrees to extradite to the other, in the circumstances and subject to the conditions described in the Treaty, persons found in its territory who are being proceeded against, or who have been charged with, found guilty or convicted of, any of the crimes covered by Article II of this treaty, committed within the territory of the other or outside thereof under the conditions specified in Article IV.
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> Article IV sufficiently defines the meaning of "territory" as all the territory of the Contracting Party, including its airspace, territorial waters and continental shelf, and vessels and aircraft registered in that Contracting Party if any such aircraft is in flight or if any such vessel is on the high seas when the crime is committed x x x x.

Whether the actual presence of the accused in the country demanding his extradition at the time of the commission of the alleged offense is necessary would depend upon the nature of the offense charged and also upon the language of the particular treaty describing the person to be surrendered as a fugitive or otherwise.[29] English and American authorities lay emphasis on the "locality of the crime" and not to the "personal liability" of the criminal. In the case of *Reg. v. Nillins*,[30] an 1884 case, a resident in England who committed an extradition crime in Germany by means of letters written in England, was held to be a fugitive criminal within the meaning of the British Extradition Act of 1870. The words in the Act are "every fugitive criminal (of a foreign state) who is in or suspected of being in any part of Her Majesty's dominion . . . shall be liable to be apprehended . . ."

Corollary to the obligation to extradite referred to above, the Treaty provides in Article III that a requested party may refuse to extradite a person claimed for a crime which is regarded by its laws as having been committed in whole or in part in its territory or in a place treated as its territory. The definition of what is deemed part of the territory of each Contracting State is sufficiently

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[28] Reg v. Lavaudier, 15 Cox C.C. 329 (1881).
[29] Sternaman v. Peck, 83 690 (1897).
[30] 53 L.J.M.C. 157 (1884).

given in Article IV of the Treaty. Article IV par. c thereof further provides that the determination of territory of the requested state shall be governed by its national laws.

Even if the crime is committed only in part within the requested states' territory the principle of territorial competence applies.[31] Firstly, there does not seem to be any criterion whereby it could be tested whether the effective administration of justice is better served by trial at the place where the act was commenced or where it took effect; and secondly, the assumption that the state where the act was done would prosecute is materially weaker when the act was only in part committed within its territory. In the event of equal claim of two States, nothing seems to be lost if the state who has control over the fugitive, also proceeds to prosecute him. This is based on the theory that if the offence is sufficiently grave to be extraditable, it is likely to be a sufficiently serious offence in the requested State to assure prosecution there.[32] It was on this basis that the Harvard Draft suggested an option to the requested State to refuse extradition on this ground. It is argued that only if the requested State is not prepare to prosecute that a duty should be cast on the requested state to extradite the fugitive.[33] De Visscher had similarly suggested to the League Codification Committee,[34]

> . . . When the acts on which the extradition is based were committed in the territory of the state requesting extradition, extradition may not be refused on the mere ground of concurrent jurisdiction, unless the said acts have already, in the state requested to extradite been made the subject either of a final judgment or of a prosecution already commenced. . . .

These views seem to have been incorporated in the Philippines-Indonesian Extradition Treaty which provide among the exceptions to the obligation to extradite cases of double jeopardy, i.e., (1) "where final judgment has been passed by the competent authorities of the requested party upon the person claimed in respect of the crime for which extradition is requested;[35] (2) "when the person whose surrender is sought is being or has been proceeded against or has been tried and discharged or punished by the requesting state for the crime for which extradition is requested".[36] This is known as the "non-bis-in idem rule" that is, that extradition should not be granted if the person claimed has already been pro-

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[31] AGRAWALA, INTERNATIONAL LAW. INDIAN COURTS AND LEGISLATURE 208 (1965).
[32] See Harvard Research, 1 AM. J. INT'L. L. 86 (1935).
[33] *Id.*, at 89.
[34] AM. J. INT'L. L. Special Suppl. 251 (1926).
[35] Philippine-Indonesian Extradition Treaty (1976), art. VIII.
[36] Philippine-Indonesian Extradition Treaty (1976), art. VIII.

secuted by the requisitioning state for the same act for which extradition is now sought, and has been acquitted or convicted unless it is sought for the purpose of execution of an unexpired sentence.[37]

Double Criminality

The Philippine-Indonesian Extradition Treaty like majority of bilateral treaties includes a list of extraditable offenses but does not itself define them.[38] Reference is made to the municipal laws and it is stipulated that the act charged must be a crime punishable by the laws of both Contracting Parties.[39] This is the principle of double criminality.

Modern writers on international law have generally stated that the principle of double criminality is accepted and basic.[40] The only justification mentioned for this practice in international law literature is that extradition not only helps the requesting state to enforce its criminal law, but also protects the requested state from being infected with criminals, i.e., criminals by the legal standards of the requested state.[41] The principle has been criticized by an author as "founded on nothing except an exaggerated notion of sovereignty" and "that it only serves as an unnecessary hurdle in the path of extraditional and effective administration of criminal justice.[42] This argument is based on three reasons: firstly, that in an international society of which only the civilized nations are members there can be no wide divergence between the legal norms of any two members; secondly, if offenses punishable with a certain maximum penalty according to the criminal law of the requested state are punished by the requesting state also although the punishments might vary; and thirdly, even if the legal standards vary, the requested state cannot rationally be supposed to have any interest in refusing to extradite any person whose surrender is demanded, except probably their own nations.[43]

There is no need, however, that the offense be known by the same name in both jurisdictions "provided the elements of crime correspond to those of one or more of the elements of the crimes mentioned in Article II.[44] The essential thing to see, according to

[37] O'CONNELL, INTERNATIONAL LAW 729 (1970).
[38] AGRAWALA, *op. cit., supra,* note 31 at 43.
[39] Philippine-Indonesian Extradition Treaty, art. II (1976).
[40] AGRAWALA, *op. cit., supra,* note 31 at 213.
[41] HARVARD RESEARCH, *op. cit., supra,* note 23 at 99.
[42] AGRAWALA, *op. cit., supra,* note 31 at 210.
[43] AGRAWALA, *op. cit., supra,* note 31 at 212.
[44] Philippine-Indonesian Extradition Treaty (1970), art. II.

one case, is whether the evidence proves prima facie that what the prisoner had done was a crime in both countries and within the treaty.[45] In one U.S. case i.e., *Factor v. Laukenbeimer*,[46] this principle was not followed. The petitioner was charged with having received at London "money, knowing the same to have been fraudulently obtained". He has escaped to the state of Illinois. In interpreting the extradition treaty between the United States and Great Britain, which was applicable to the case, the U.S. Supreme Court pointed out that by the treaty itself a distinction had been clearly drawn between extradition crimes to which the principle of double criminality was to apply and those to which it was not to apply. The Supreme Court found that the offence with which the petitioner was charged, was extraditable, even if it were not punishable by the law of the State of Illinois where the plaintiff was taken into custody.

This decision has been severely criticized as "giving too much importance to the express provisions for double criminality in certain categories under the treaty, and too little importance to the general principle of double criminality which that court had previously recognized".[47]

The Philippine-Indonesian Treaty would appear to lend itself to a more liberal construction suggested by Justice Stone who observed, "the obligation to do what some nations have done voluntarily, in the interest of justice and friendly international relationships, should be construed more liberally than a criminal stature or the technical requirements of criminal procedure.... Once the contracting parties are satisfied that an identified offence is generally recognized as criminal in both countries there is no occasion for stipulating that extradition shall fail merely because the fugitive may succeed in finding in the country of refuge, some state, territory or district in which the offence charged is not punishable".[48] This latter complication would not obtain in the case of unitary states like the Philippines and Indonesia.

This liberal construction of the double criminality principle is more applicable to other category of extraditable crimes provided for in the Treaty. Article II paragraph C provides that "A requested Party may at its discretion grant extradition in respect of any other crimes for which it can be granted according to the laws of both Contracting Parties". Whereas the schedule of extra-

[45] Rex v. Dix 18 T.L.R. 231 (1902).
[46] 290 U.S. 276 (1933).
[47] See Harvard Research, *op. cit., supra*, note 17 at 213-14.
[48] AGRAWALA, *op. cit., supra*, note 31 at 214.

ditable crimes under paragraph A thereof requires that these crimes be punishable by the laws of both Contracting Parties by a possible penalty of death or deprivation of liberty for a period exceeding one year, those under paragraph C do not require any specific penalty therefor.

Moreover, it has been held that in relation to persons charged with offences not named in the treaty, each government, as an incident of its sovereignty, may either grant or deny to the fugitive an asylum within its jurisdiction.[49]

The Rule of Specialty

The Treaty incorporates in Article IX a usual feature of extradition laws and extradition treaties known as the rule of specialty under which the State of asylum generally lays down as a condition that the surrendered individuals be prosecuted, sentenced or detained for those crimes exclusively for which he was extradited. He cannot be tried for any offence committed prior to his surrender until he is given an opportunity of returning to the extraditing state. The Treaty provides for two (2) exceptions to this rule, i.e., *first,* when the requested Party which surrendered him consents and *second,* when the person waives his privilege under this rule either (1) by not leaving the territory to which he has been surrendered within 45 days of his final discharge and (2) by returning to that territory after leaving it.

The question has arisen as to whether this rule is one of international law or not. If the rule of specialty is one of international law, the accused would not be subject to the prosecution whether the extraditing state consented or not. If the basis of the rule is merely comity whereby it would be an act of bad faith towards the extraditing state to proceed with the prosecution of another offence—then if the municipal law is silent on the matter, there would seem to be no reason why the consent of the extraditing state should not overcome any difficulties.[50]

The 'reichsgeucht' in 1921 held it was a rule of international law so that even when the relevant extradition treaty was silent on the point, an accused could be prosecuted in Germany only for the offence for which he was extradited.[51] In the United States the principle has been observed in the absence of treaty

[49] Greene v. U.S., 154 F. 401 (1907).
[50] O'CONNELL, *op. cit., supra,* note 37 at 803.
[51] Germany and Czechoslovakia Case, Case No. 182 Ann. Dig., 1919-1920.

stipulation. In *U.S. v. Rauscher*,[52] the defendant had been extradited under the Anglo-American treaty of August 9, 1942, upon a charge of "murder" but had been indicted and found guilty on a charge of inflicting cruel and unsual punishment. Denying the jurisdiction of the trial court to try him, except for the offence for which he was extradited, even though the treaty contained no express stipulation to the effect, the U.S. Supreme Court observed

> The weight of authority and of sound principle that a person who has been brought within the jurisdiction of the court by virtue of proceedings under an extradition treaty, can only be tried for one of the offences described in that treaty, and for the offence with which he is charged in the proceedings for his extradition, until a reasonable time and opportunity have been given him, after his release on trial upon such charge, to return to the country from whose asylum he had been forcibly taken under those proceedings.

The Philippine-Indonesian Extradition Treaty makes it mandatory for the "Contracting Party" "to give consent when the crime for which it is requested is itself subject to extradition in accordance with the provisions of Article II of the Treaty". The Harvard Research did not agree to a similar provision:

> It seems preferable to leave it to the surrendering state to grant or withhold its consent, rather than to impose on it absolute duty. It may reasonably be assumed that the surrendering state guided by a spirit of international cooperation in the repression of crime, will not withhold its consent if the offence would be extraditable under this convention. The surrendering state will have little interest in impeding the course of justice by insisting on another extradition proceedings with all the time and expense involved.[53]

In this regard the opinion of Dr. S. K. Agrawala appears to be more convincing.[54] According to him, if such a provision is desirable and the states are not reasonably expected to impede the course of justice, it is certainly preferrable to incorporate it in the municipal statutes, extradition treaties and even international conventions.

To him the "rule of specialty" is a "relic of the past when it was considered an attribute of sovereignty to retain absolute control over the persons within the territory of a state, when all reasonable claims of the other state to obtain the surrender of the person were considered as involving the surrender of a fraction of sovereignty". To-day when the need for international cooperation in suppressing crime wherever committed is realized by all states, the rule of specialty seems to be rationally indefensible.

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[52] 119 U.S. 407 (1886).
[53] HARVARD RESEARCH, *op. cit.*, *supra*, note 17 at 214.
[54] AGRAWALA, *op. cit.*, *supra*, note 31 at 215.

Non-Extraditable Persons

a. Political Offenders

Conformably with the political offence doctrine in international law which posits that political offenders should not be extradited, Article V, paragraph A of the Philippine-Indonesian Treaty provides:

> Extradition shall not be granted if the crime in respect of which it is requested is regarded by the requested party as a political crime.

Pursuant further to the generally accepted principle of international law which grants to the state of asylum the sovereign right of deciding according to its municipal law and practice[55] the question of whether or not the subject offence is political or not, Article V, par. b provides:

> If any question arises as to whether a case is a political crime, the decision of the authorities of the requested state shall be determinative.

The political offence doctrine in international law is a focal point of controversy because of the lack of universal agreement on the definition of the term "political offence."[56] The UN Declaration on Territorial Asylum of 14 December 1967,[57] embodies this principle of unilateral qualification, i.e., "It shall rest with the state granting asylum to evaluate the grounds for the grant of asylum." The League Codification Committee consisting of Brierly and De Visscher approved the practice of leaving it to the state on which the demand for extradition is made to decide whether in any given case an alleged crime is political or not. The Harvard Draft has also incorporated a similar provision.

The cases uniformly hold that the right to decide whether or not the right is political belongs to the state of refuge.[58] The exercise of this function has been interpreted as a right but not a duty of the asylum state and an extradition treaty grants the right to avail of the political offence doctrine only to the signatories and not to any individual.

In evaluating the result of this situation, Ms. Santiago in her book, "Political Offence in International Law" points out:

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[55] 2 HYDE, INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED IN THE UNITED STATES 1019-1027 (1945); MOORE, A TTEATISE ON EXTRADITION AND INTESTATE RENDITION', 303-306 (1886); Harvard Research, *op. cit., supra,* note 17 at 107-109.

[56] SANTIAGO, POLITICAL OFFENCES IN INTERNATIONAL LAW 298 (1977).

[57] G.A. Res. 2312, 22 U.N. G.A.O.R. Supp. 16 at 81 U.N. Doc. A/5217.

[58] SANTIAGO, *op. cit., supra,* note 56 at 299.

> Obviously, in this situation the political offender has the short end of the stick. He is subject to motivations of bad faith on both sides: The pursuing state might make the request for extradition in bad faith (by camouflaging the fact that the offence is political) and the asylum state might surrender him in bad faith (knowing fully well that his offence is political and will be punished with undue harshness in the requesting state). In either the political offender could occupy the role of a helpless pawn. It is clear that to the Courts, individual freedom and human rights are not yet sufficiently strong to counterveil against state security and notions of public welfare. This is the message borne by the cases.[59]

The operationalization of the political offence doctrine embodied in the Philippine-Extradition Treaty is potentially the most problemmatical area in the implementation of the Treaty. "The confusion and ambiguity which surrounds the debate on the formulation of an acceptable definition of political offence", notes Ms. Santiago, has permeated not only the substantive aspects of the doctrine but its procedural aspects as well.

The ultimate issue boils down to the enforcement of the individual's right to asylum vis-a-vis the "unilateral qualification of states" to determine whether the crime is a political offence or not. The fact is that although the political offence is a rule of international law, the political offender has no procedural capacity to demand his right of asylum.[60] In a bipartite extradition treaty, the individual cannot derive any right from the political office clause, because the only subject of international law which may protest against the violation of the treaty is the other contracting state, which would be at the same time the state requesting extradition. Stated otherwise, if extradition is granted, the individual cannot raise the defence in the court of the requisitioning state that as a political offender he is not justiciable before it. In the words of one libertarian:[61]

> First, the denial of a person's right to asylum is a serious reflection upon both the absence of legally binding principles enforcing human rights in the international sphere and upon the existence of legally sanctioned rules according to which states have the last word as to when to protect human rights, as agents of the international community.... Secondly, international law can be justly indicted for permitting that an institution (right of asylum) so intimately related to the protection of human rights and values should be in the nature of concession to be given by the state acting exclusively

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[59] Santiago, *Procedural Aspects of the Political Offence Doctrine*, PHIL. L.J. 241 (1976).

[60] *Id.*, at 239.

[61] FERNANDEZ, DO ASILO DIPLOMATICO 103 (1961), cited in EVANS, REFLECTIONS UPON THE POLITICAL OFFENCE IN INTERNATIONAL LAW, 51 AM. J. INT'L. L. (1963).

> in terms of their own interests and policies.... Third, it is a gross contradiction to talk of a right of asylum if its effectiveness depends upon the unlimited will of the state in every specific case.

For making the obligation to grant asylum, i.e., not to extradite political offenders, is a "guaranty of democracy against dictatorship."[62]

The presence of the "attentat clause' in an extradition treaty represents an attempt to limit the right of "non-extradition of political criminals in order to prevent its misuse. By virtue of this clause, the murder of the head of foreign government or a member of his family shall not be deemed to be a political crime.[63] Article V of the Philippine-Indonesian Treaty contains this clause.

b. Nationals

The contracting Parties, in the Treaty under consideration adopt the state practice of some countries like France, Belgium and Germany of not extraditing their nations. Article VI of the Treaty provides that "each Party shall have the right to refuse extradition of nationals." This provision really makes it optional for each Party to extradite its own nation. Corollarily, the Treaty obliges the requested state to prosecute the national so extradited.

This provision is in accord with existing conventions on Extradition like the Montevideo Convention of 1933. In the Harvard Draft Convention, the emphasis has been reversed — the extradition of nationals has been laid down as the rule (Article 7) but if a state has laid down a reservation extradition may be refused if the act is punishable in the requested state. The requested State would thein be under a duty to prosecute the person.[64]

B. *Procedure for Extradition*

Since extradition is effected as the result of the provisions of treaties entered into by the nations two by two, it is impossible to formulate any general rule of international law upon the subject. It is however, possible to bring together the provisions common to the treaties of the leading states and to point out the more important conditions attached to the practice of extradition. The U.S. has concluded in the course of its history a great number of treaties of extradition, which in this wide variety, illustrate the common as well as the exceptional practice of nations.[65] The list of offenses

[62] As cited in Santiago, *op. cit., supra,* note 59 at 304.
[63] 2 HYDE *op. cit., supra,* note 55 at 1027-1029.
[64] AM. J. INT'L. L. Suppl., *op. cit., supra,* note 34 at 289, 292.
[65] FENWICK, *op. cit., supra,* note 10 at 390.

for which extradition will be granted includes not only the more serious crimes which are felonies at common law but others which are either felonies by statute or merely misdemeanors.[66] The treaty with France 1909, replacing earlier treaties, include such crimes as forgery, fraud by a guardian or trustee, perjury, kidnapping and mutiny on the high seas. In general, the crime must be one with respect to which there is general agreement among civilized nations as to definition,[67] the kind and amount of evidence to be adduced as proof, and the punishment assigned to the offense.

As extradition involves to a certain extent the surrender of power over an individual within the jurisdiction of the state of refuge, the latter is under legal obligation to deliver up the individual to the demanding state only if there is a treaty that binds the two states. In the absence of a treaty, the surrender of a fugitive criminal may still take place, not as a matter of legal obligation, but as one of moral obligation founded on international comity. A request for extradition may therefore be refused in the absence of a treaty obligation. Where the request is based on a treaty obligation, it may not in law be refused except so far as the state refusing to grant the request can justifiably invoke a condition to the treaty of extradition that has not been fulfilled.

Today, there are two main types of extradition treaties: (1) the older or classical type which specifies the offenses for which extradition is provided; and (2) the modern type, such as the Monteviedo Convention on Extradition of 1933, which contains no list of offenses, but provides for extradition in all cases where the offenses is punishable in both the demanding and surrendering states.[68]

Extradition is carried on principally under bilateral treaties a number of which fall under the "list" type of treaty i.e., one which carries a list of extraditable crimes.[69] Stipulations in the treaty are peculiar to the needs of the contracting states, however, based on a study of treaties and practice, certain common characteristics and conditions become apparent. The requirements that the offenses must be specified as the treaty between the states, that it must be considered a crime by both the requesting and requested state and that such crime must be included in the list of extraditable crimes

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[66] The specified crimes included in the general definition of a crime are, as a rule, determined by the law of the place where the offense was committed.

[67] Treaty betwen the U.S. and France (1909 3-1 TREATY, CONVENTIONS INTERNATIONAL ACTS, PROTOCOL, AND AGREEMENTS BETWEEN THE U.S.A. AND OTHER POWERS, 1910-1923, 2580 (Redmond ed., 1923).

[68] SALONGA & YAP, PUBLIC INTERNATIONAL LAW 235 (1974).

[69] HARVARD RESEARCH ON INTERNATIONAL LAW, EXTRADITION, 29 AM. J. INT'L. L. 243 (1935).

set out in the treaty are found in most treaties. The requirement of the offense not being political in nature is almost universal.[70] In the process, however, the problem of whether said offense is criminal and listed in the list of extraditable crimes has to be answered first before the question of its being political in nature can be tackled. Hence, whether a crime is politically inspired or not is of no moment until after the finding that said offense is recognized as criminal by both states.

The treaties of the United States almost uniformly contain express provisions prohibiting the trial or punishment of an extradited criminal for any offense committed prior to his extradition other than that for which his extradition is granted. The United States extradition treaty with Peru requires that the consent of the surrendering government be secured first before prosecution and punishment of the offender for another offense. Our treaty with Indonesia follows this principle which states that a person who has been extradited shall not be prosecuted, sentenced or detained for any crime committed prior to his surrender other than that for which he has been extradited, except upon consent of the surrendering party or when the offender does not escape within 45 days of his final discharge, having had opportunity to do so, or has returned to the territory of the requesting Party after leaving it.[71]

In no event is there any obligation to the trial of the fugitive for an offense committed subsequent to his extradition nor has an extradited person a right to be tried on the offense for which he was extradited before he is tried for an offense committed subsequent to his extradition[72] but a fugitive extradited on a pending indictment may not be imprisoned in the demanding country on a previous conviction.[73] Under a treaty which contained a provision prohibiting trial and punishment for any other offense other than that for which extradition has been granted until the accused shall have had an opportunity to return to the country from which he has been extradited, it was held that a person who while at liberty on bail goes to the country from which he was extradited and subsequently voluntarily returns can not be arrested for another offense committed prior to his extradition but is entitled to depart to the country from which he was surrendered after his discharge from cus-

[70] GRIEG, INTERNATIONAL LAW 324-325 (1970).
[71] Philippine-Indonesian Extradition Treaty, art. IX (1976).
[72] Collins v. Johnston, 237 U.S. 502, 35 S.Ct. 649, 59 L.Ed. 1071 (1915).
[73] Johnson v. Browne, 205 U.S. 309 (1907).

tody or imprisonment on account of the offense for which he has been extradited.[74]

Provisional Arrest

Provisional arrest is necessary only in case of urgency.[75] However, the situations which would call for urgent action are not identified in the treaty. It is the requested party which shall decide the matter in accordance with its municipal laws. Problems would arise from a situation wherein the requested state does not consider as urgent, a request which to the requesting state is. The principle that extradition is based upon mutual faith of states in the legal sytsem of each other and is aimed at promoting international cooperation in the suppression of crimes[76] would come into the picture and be tested.

Surrender of the Person to be Extradited

The case of a voluntary surrender of the offender, but in violation of the municipal law of the State which makes it, is different from the usual process of a requisition for the surrender of the offender. Although no appeal lies from the decision to commit the accused, he may challenge the lawfulness of the order and the legality of his detention by applying for a writ of habeas corpus. But habeas corpus is not allowed as a means of inquiring into the treatment likely to be received by the accused in the requesting state. Even if the surrender is contrary to an extradition treaty, it is still not a violation of international law since no sovereign is affronted and the offender has no rights other than in the municipal law.[77] There is therefore, as the permanent Court of Arbitration held in Savarker case,[78] concerning an irregular surrender to a British ship by the French police of an Indian who had escaped from it in the port of Marseilles, "no rule of international law imposing in circumstances such as these above, any obligation on the Power which has in its custody a prisoner to restore him because of a mistake by the foreign agents who delivered him up to that Power." In *Ker v. Illinois*,[79] the appeal was by way of writ of error to the Supreme Court of Illinois on the ground that the accused had been

[74] Cosgrove v. Winney, 19 S.Ct. 598, 54 L.Ed. 897 (1899).
[75] Philippine-Indonesian Extradition Treaty XI (1976), Pres. Decree 1069 (1977).
[76] Brierly, *Report of the League of Nations Committee of Exports*, 1 AM. INT'L. J. L., 248 (1936).
[77] 1 SCOTT, HAGUE COURT REPORTS 276 (1932) citing the Savarkar Case, 1911.
[78] O'CONNELL, 907 (1965).
[79] 119 U.S. 436 (1886).

kidnapped in Peru and forcibly brought to Cook Country without the proper process of extradition. The Supreme Court, however, upheld the jurisdiction of the court, pointing out the remedy for the breach of International Law as at the diplomatic level, and that the physical presence of the accused before the Court no matter how he came there, sufficed to validate the proceedings.[80] The RP-Indonesia Extradition Treaty provides for refusal to surrender or postpone surrender based on reasons and subject to the municipal law of both parties.[81] Under many municipal law systems, no arrest is made except as a preliminary to prosecution of offenses within the jurisdiction of the Court. Arrest for the purpose of extradition is an extension of the law and can only be justified by the internal operation of a treaty or by municipal legislation.

Handing over of Property

A common provision to extradition treaties found in the Philippine-Indonesian Extradition Treaty[82] is that all articles found in the possession of the accused whether being the proceeds of the crime charged, or material as evidence in making proof of the crime, shall so far as practicable and in conformity with law be given up when extradition takes place.[83] A proviso is generally inserted that the rights of third parties to such articles shall nevertheless be respected.[84]

Procedure

The normal practice of states is to frame their extradition laws first and then to enter into treaties in conformity therewith and specify in the treaties all those crimes for which they are willing to grant extradition. In the case of the Philippines, no such law existed prior to the conclusion of the Philippine-Indonesian Extradition Treaty on February, 1976, which is her first extradition treaty. However, on 13 January 1977, President Ferdinand E. Marcos issued Presidential Decree No. 1069 prescribing the procedure for the extradition of persons who have committed crimes in other countries.

The extradition process operates on two independent but interrelated levels, the judiciary and the diplomatic level. This operation is spelled out in the Philippine-Indonesian Treaty subject, how-

[80] Art. XII, *op. cit., supra,* note 75 at 7.
[81] Art. XIII, *op. cit., supra,* note 75 at 8, Pres. Decree No. 1069 (1977).
[82] Art. XIV, *op. cit., supra,* note 75 at 9.
[83] Pres. Decree 1069 (1977).
[84] BRIERLY, *op. cit, supra,* note 76 at 248.

ever, to the municipal law of the requested state.[85] The process starts with the communication addressed thru the diplomatic or consular agencies of the requisitioning state to the Minister of Justice of the Requisitioned State. This is called a "requisition" and identifies the person claimed, records that a warrant of arrest or an equivalent document has been issued, states the act for which the prosecution will be taken and is supported by authenticated copies of relevant documents. The requisitioned State then takes the necessary steps to apprehend the offender. We can see that the whole process revolves around the Ministry of Foreign Affairs and the Ministry of Justice.

In determining whether to allow a state to extradite an alleged criminal under an extradition treaty, the courts of a contracting state have to determine whether the grounds of extradition exist. They are not supposed to try the case, but merely to determine whether on the face of it, there is sufficient evidence to justify the commitment for trial of the accused. The line between assessing the weight of evidence and judging the alleged crime is not always easy to determine. In the case of Samuel Insull in 1933, for instance, a Greek court refused to extradite Insull, who was wanted in the United States for violating the income tax laws because there is not sufficient evidence to justify the commitment for trial of the accused.[86] The practice of requiring the requisitioning country to make out a prima facie case creates difficulties for the requisitioning state which must produce evidence that will satisfy the court of the requisitioned state that there is a case.[87] The exigencies of proof vary enormously from one country to the other that the authorities of the requisitioning state are put to the burden of preparing their case to satisfy the requirements of a foreign system.[88]

The role of the Ministry of Justice of reviewing evidence and passing on it to test the non-political or political character of the offense is a task which is very subjective for if it chooses to consider evidences to be political and refuse extradition it could do so under the protective cloak of our municipal law.

The Harvard Draft sought to overcome this type of problem by requiring production only of the requisition, a copy of the warrant of arrest and a copy of the foreign law under which the charge is laid. This dispenses with the problem of evidence and thus limits

[85] Art. XV, *op. cit., supra*, note 75.
[86] 28 AM. J. INT'L. L. 362-372 (1934).
[87] *In re* Lucke, 20 F. Supp. 658 (1937).
[88] Waskerg v. Att. Gen., I.L.R. 236 (1954).

the judicial control of extradition to such general matters as identification of the extraditable character of the crime.[89]

Expenses

Every treaty of extradition to which the United States is a party contains a provision that the expenses of extradition shall be borne by the demanding government, and it is the practice of the demanding government to defray the expenditures of the proceedings whether the fugitive is eventually extradited or not.[90] It is also added that the demanding government officials from which extradition is sought shall not receive fees if they receive a fixed salary and in other cases where such officers receive only fees, the charge for their services shall not exceed the fees to which they would be entitled under the laws of the country for services rendered in ordinary criminal proceedings. The costs and fees incurred in obtaining witnesses for the accused in extradition proceedings are in some cases borne by the U.S. government. The magistrate is also required to certify the witness fees and costs of every nature including his own fees, to Secretary of the State, who is authorized to allow payment thereof out of the appropriation to defray expenses of the judiciary, and to obtain reimbursement of the amount thereof from the foreign government by whom the proceedings may have been instituted. A treaty provision[91] that on extradition the expense of apprehension and delivery shall be borne by the "party" who make the requisition and receives the fugitive, has been held to refer to the contracting parties to the treaty, and has no reference to any question which may arise between the government which receives the fugitive and its officers or citizens. A person named by the governor and by the president of the United States to receive from the Canadian authorities and return to Allegheny county under the extradition treaty between the United States and Great Britain, one charged with crime in that county can not hold the state or county for expenses and services in securing the return of the prisoner under a statute providing that such expenses shall be paid for "removing any person charge with having committed . . . . any offence in this state from another State into this State for trial."[92] A statute forbidding an officer to ask or receive any fee or compensation for expenses incurred in procuring from the government a demand on the executive authority of a state or territory or of a foreign government does not apply to interna-

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[89] O'CONNELL, *op. cit., supra,* note 78 at 803.
[90] *Ibid.*
[91] Peo. v. Columbia County, 56 Hun. 17, 8 N.Y.S. 752 (1890).
[92] Goldfon v. Allegheny County, 8 Pa. Dist. 387 (1960).

tional extradition proceedings.[93] The agent representing the state is the only person who can make expenditures in extradition proceedings which the country from which the fugitive fled will be required to pay; and where the county has paid such agent it will not be called upon to reimburse such county attorney for expenses incurred by him in the proceedings.[94] The statute i.e., An Act Regulating Fees and Practice in Extradition Treaties passed on August 3, 1882, provides that on the hearing of any case under a claim of extradition by any foreign government, upon affidavit being filed by the person charged setting forth that there are witnesses whose evidence is material to his defense, that he cannot safely go to trial without them, what he expects to prove by each of them, and that he is not possessed of sufficient means, and is actually unable to pay the fees of such witnesses, the judge or the commissioner before whom such claim for extradition is heard may order that such witnesses be subpoenaed and in such cases the cost incurred by the process, and the fees of the witnesses shall be paid in the same manner that similar fees are paid in the case of witnesses subpoenaed in behalf of the United States.[95] Request for the extradition of fugitive criminals are presented through the diplomatic channels in the foreign state.

In the text of the Philippines-Indonesia Extradition Treaty, however, it is the Minister of Justice to whom requests for extradition are sent. Article XVII provides: A request for extradition shall be in writing and sent in Indonesia to the Minister of Justice, and the Philippines to the Secretary of Justice, through the diplomatic channels.[96] This appears to be a more direct procedure. However, Presidential Decree 1069 adheres to the usual practice of states. It provides: "Upon receiving the request, the foreign government institutes a judicial investigation to determine whether there is sufficient evidence, in accordance with the local law, to warrant apprehension of the fugitive. If, as a result of this investigation, there is prima facie evidence of guilt, the fugitive is thereupon surrendered. Pending the presentation of a formal request for extradition, application may be made by the foreign state by telegraph for the arrest and detention of a fugitive for a period not exceeding forty days.[97] When the fugitive is returned, he must be tried for the offense mentioned in the request for his extradition, and for no other, not even for a lesser offense included in the more serious one specified.

[93] Ellis v. Jacob, 17 App. Div. 471, 45 N.Y.S. 177, (1897).
[94] Rucker v. Coffey County, 7 Kan A. 470, 54 P. 141, (1898).
[95] 22 U.S. St. at L. 215.
[96] Art. IV *op. cit., supra,* note 75 at 6.
[97] U.S. v. Rauscher, *op. cit., supra,* note 12.

PRINCIPLE OF SPECIALTY

So insistent have nations been at times with respect to the observance of the principle of trial for specified offenses recognized as such by both countries as to give the impression of greater concern for the protection of the fugitive criminal than for the local community whose law has been violated. In 1970, one Nalbandian was indicted for murder in Massachesetts and fled to his native state Bulgaria. Bulgaria cooperated by surrendering him even in the absence of a treaty of extradition. When, however, the agents of the State Department asked permission from Rumania for the transit of the prisoner through that country, the request was refused on the ground that even though there had been a treaty of extradition between the United States and Rumania, the penalty for murder in the United States was death, and Rumania would have been obliged to require that the United States should not exact death penalty.[98] in 1928, the United States requested for the extradition of H.M. Blackmer on the ground of "false swearing" but the French court advised against granting the request, on the ground that the punishment for the offenses differed in the two countries and that the corrective, as opposed to criminal penalty imposed by France had been barred by prescription.[99] In the notorious case of Insull, Insull claimed that he had taken refuge in Greece before the treaty under which the United States demanded his extradition had come into effect, due to the delay in the exchange of ratification. On these points, the Greek court held that the accused could not invoke the principle of non-retroactivity as a bar to his extradition. In the light of the RP-Indonesian treaty, an article provides that a crime commenced prior to the date of this Treaty enters into force but completed after the date this Treaty enters into force shall be extradited pursuant to this Treaty.

Multiple Requests

As to the section on multiple requests, the text of the Extradition Treaty appears to require more details than Presidential Decree 1069. While the Extradition Treaty states "A contracting party which receives two or more requests for the extradition of the same person either for the same crime, or for different crimes, shall determine to which of the requesting States it shall extradite the person sought, taking into consideration the circumstances and particularly

[98] STOWELL & MUNRO, INTERNATIONAL CASES 403-408 (1916).

[99] FRANCE, Court of Paris, Chambre Des Mises En Accusation, 1928 as cited in HUDSON, CASES AND MATERIALS IN INTERNATIONAL LAW, 514, 515 (1951).

the possibility of a later extradition between the requesting States, the seriousness of each crime in the place where the crime was committed, the nationality of the person sought, the dates upon which the requests were received and the provisions of an extradition agreement between that Party and the other requesting State or States"; the Presidential Decree provides that "In case extradition of the same person has been requetsed by two or more states, the Secretary of Foreign Affairs, after consultation with the Secretary of Justice, shall decide which of the several requests shall first be considered, and copies of the former's decision thereon shall be promptly forwarded to the lawyer having charge of the case, if there be one, through the Department of Justice."

Sometimes, the regular procedure is not followed.[100] There is no agreed rule covering the case where extradition is requested concurrently by more than one state, either for the same offense or for different offences. When a requested state receives more than one request for the same offense, it may give preference to the requesting state in whose territory the act was committed. If the act was committed in the territory of more than one requesting state, the requested state may extradite the person claimed to the state whose request is first received. When a requested state receives two or more state requests for the same person with respect to different offences, the requested state may, in extraditing the person claimed, decide to which state it will extradite, having regard to all the circumstances, especially the relative seriousness of the offences, the nationality of the person claimed, the times when the requests are received and the possibility of subsequent extradition to another state.[101] These requisites are embodied in the RP-Indonesian Extradition Treaty.

CONCLUDING REMARKS

According to the majority of treaties concluded in matters of extradition, ten general rules are considered binding. These may be summarized in the following way:

1. According to the Principle of Specialty, the offense for offense for which extradited person may be tried only for those offenses which were specified in the request for which extradition was granted;

2. According to the Principle of Double Criminality, the offense for which extradition is requested must be a crime by the law of

[100] SALONGA & YAP, *op. cit., supra,* note 68 at 214.
[101] SORENSEN, MANUAL OF PUBLIC INTERNATIONAL LAW 524-525 (1968).

both requesting and requested states. This rule does not, however, imply that the same act must be legally defined, and named in both law codes in exactly the same way. For example, a homicide may be regarded as murder in the law of one state and as manslaughter in the other;

3. The principle of granting immunity from double jeopardy must be maintained. (non bis-in-idem).

A requested state may decline to extradite a person claimed if such person has been prosecuted by the requesting State for the same act or acts for which his extradition is sought and has been acquitted or if he has been convicted in such prosecution, unless the extradition is sought in order that the person claimed may serve an unexpired term of the sentence imposed as the result of such conviction. A requested party may decline to extradite a person claimed if such person has been prosecuted by the requested state or by a third state for the same act or acts for which extradition is sought and had been acquited or convicted;

4. A written requisition must be presented through proper diplomatic channels to the government of the requested State, which submits facts communicated to judicial examination prior to final determination;

5. Sufficient evidence must be submitted. Such evidence must be sufficient to establish a prima facie case against the accused or that there is probable cause to believe the accused to be guilty of the offense or offenses charged;

6. Pending formal presentation of the extradition request, the requesting party may make application for arrest and detention of a fugitive for a period not to exceed 40 days;

7. Extradition declines to punish under an ex post facto law or if the person claimed has acquired immunity from prosecution or punishment by lapse of time according to the law of either the requesting or the requested State;

8. Extradition from countries which have abolished capital punishment is granted only on condition that the death penalty will not be enforced on the surrendered criminal;

9. Extradition is granted only for offenses explicitly declared subject to extradition in a treaty or for offences for which the law of the requesting state, in force when the act was committed, provides a possible death penalty or deprivation of liberty for a period of two years or more, and for which the law, in force in that part

of the territory of the requested state in which the person claimed is apprehended, a possible death penalty or deprivation of liberty is provided for a period of two years or more, which would be applicable if the act were there committed;

10. Extradition for political offenses is to be denied.

It is to be noted however that the conclusion of a political treaty like this is reflective of the increased cooperation between the two countries which both belong the Association of Southeast Asian Nations (ASEAN). It can be safely surmised that implementation of the treaty proviisons will take place under these most auspicious circumstances in the region.

A thorough assessment of the two-year old Philippine-Indonesian Extradition Treaty is not possible at this stage in view of the absence of actual cases calling for the application of the Treaty.

The foregoing textual analyses lead us to conclude that the Treaty conforms with the generally accepted principles of international extradition. Likewise we have tried to note the departure in the Treaty from other state practices.

Foremost of the potential sources of difficulty that may be encountered by the two states in implementing the Treaty is the operationalization of the political offence doctrine. The problem is understandable as the doctrine itself remains a focal point of controversy in international law.

This issue assumes greater significance considering that both Contracting Parties are under so-called "constitutional authoritarian" rule. The ultimate challenge therefore is how to make the political offence doctrine embodied in the Treaty as a real "guaranty of democracy against dictatorship".

APPENDICES

Appendix "A"

EXTRADITION TREATY BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE REPUBLIC OF INDONESIA

THE REPUBLIC OF THE PHILIPPINES AND THE REPUBLIC OF INDONESIA:

Desiring to make more effective the cooperation of the two countries in the repression of crime and, specifically, to regulate and thereby promote the relations between them in matters of extradition,

HAVE AGREED AS FOLLOWS:

ARTICLE I
Obligation to Extradite

Each Contracting Party agrees to extradite to the other, in the circumstances and subject to the conditions described in this Treaty, persons found in its territory who are being proceeded against or who have been charged with, found guilty or convicted of, any of the crimes covered by Article II of this Treaty committed within the territory of the other, or outside thereof under the conditions specified in Article IV.

ARTICLE II
Extraditable Crimes

A. Persons shall be delivered up according to the provisions of this Treaty who are being proceeded against or who have been charged with, found guilty or convicted of, any of the following crimes provided that these crimes are punishable by the laws of both contracting parties by a possible penalty of death or deprivation of liberty for a period exceeding one year:

1. Murder, parricide, infanticide, and homicide;
2. Rape, indecent assault, unlawful sexual acts with or upon minors under the age specified by the penal law of both Contracting Parties;
3. Abduction, kidnapping;
4. Mutilation, physical injuries, frustrated murder or frustrated homicide;

5. Illegal or arbitrary detention;
6. Slavery, servitude;
7. Robbery, theft;
8. Estafa, malversation, swindling, fraud, cheating;
9. Extortion, threats, coercion;
10. Bribery, corruption, graft;
11. Falsification, perjury;
12. Forgery, counterfeiting;
13. Smuggling;
14. Arson, destruction of property;
15. Hijacking, piracy, mutiny;
16. Crimes against the laws relating to narcotics, dangerous or prohibited drugs or prohibited chemicals;
17. Crimes against the laws relating to firearms, explosives, or incendiary devices.

B. Extradition shall also be granted for participation in any of the crimes mentioned in this Article, not only as principals or accomplices, but also as accessories, as well as for attempt to commit or conspiracy to commit any of the aforementioned crimes, when such participation, attempt or conspiracy is punishable under the laws of both Contracting Parties by deprivation of liberty exceeding one year.

C. Extradition may also be granted at the discretion of the requested Party in respect of any other crimes for which it can be granted according to the laws of both Contracting Parties.

D. If extradition is requested for any crime encompassed by paragraphs A, B or C of this Article and that crime is punishable under the laws of both Contracting Parties by a deprivation of liberty exceeding one year, such crime shall be extraditable under the provisions of this Treat whether or not the laws of both Contracting Parties would place that crime within the same category of crimes or denominate the crime by the same terminology, provided the elements of the crime correspond to those of one or more of the crimes mentioned in this Article under the laws of both Contracting Parties.

ARTICLE III
Place of Commission

The requested Party may refuse to extradite a person claimed for a crime which is regarded by its laws as having been committed in whole or in part in its territory or in a place treated as its territory.

ARTICLE IV
Territorial Application

A. A reference in this Treaty to the territory of a Contracting Party is a reference to all the territory under the jurisdiction of that Contracting Party, including its airspace, territorial waters and continental shelf, and to vessels and aircraft registered in that Contracting Party if any such aircraft is in flight or if any such vessel is on the high seas when the crime is committed. For purposes of this Treaty, an aircraft shall be considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation.

B. When the crime for which extradition has been requested has been committed outside the territory of the requesting State, the Executive Authority of the requested State shall have the power to grant extradition if the laws of the requested State would provide for the punishment of crime committed in analogous circumstances.

C. The determination of the territory of the requested Party shall be governed by its national laws.

ARTIVLE V
Political Crimes

A. Extradition shall not be granted if the crime in respect of which it is requested is regarded by the requested Party as a political crime.

B. If any question arises as to whether a case is a political crime, the decision of the authorities of the requested State shall be determinative.

C. The taking or attempted taking of the life of the Head of State or Head of Government of either of the Contracting Parties or of a member of his family shall not be deemed to be a political crime for the purpose of this Treaty.

ARTICLE VI
Extradition of Nationals

A. Each Party shall have the right to refuse extradition of nationals.

B. If the requested Party does not extradite its nationals, that Party shall at the request of the requesting Party submit the case

to the competent authorities of the former for prosecution. For this purpose the files, information and exhibits relating to the crime shall be surrendered by the requesting Party to the requested Party.

C. Notwithstanding paragraph B of this Article, the requested Party shall not be required to submit the case to its competent authorities for prosecution if the authorities have no jurisdiction.

ARTICLE VII
Exceptions to Obligation to Extradite

Extradition shall not be granted in any of the following circumstances.

1. When the person whose surrender is sought has been tried and acquitted or has undergone his punishment in a third State for the crime for which his extradition is requested.

2. When the prosecution or the enforcement of the penalty for the crime has become barred by prescription or lapse of time of either of the Contracting Parties.

3. When the crime constitutes an infraction against military law or regulations which is not a crime under ordinary criminal law.

ARTICLE VIII
Double Jeopardy

Extradition shall not also be granted in any of the following:

A. When final judgment has been passed by the competent authorities of the requested Party upon the person claimed in respect of the crime or crimes for which extradition is requested.

B. When the person whose surrender is sought is being or has been proceeded against or has been tried and discharged or punished by the requested State for the crime for which his extradition is requested.

ARTICLE IX
Rule of Specialty

A person who has been extradited shall not be prosecuted, sentenced or detained for any crime committed prior to his surrender other than for which he was extradited *except* in the following cases:

(a) When the requested Party which surrendered him consents. A request for consent shall be submitted to the requested

Party, accompanied by the documents mentioned in Article XVII. Consent shall be given when the crime for which it is requested is itself subject to extradition in accordance with the provisions of Article II of this Treaty; and

(b) When the person, having had an opportunity to leave the territory of the Party to which he has been surrendered, (1) has not left so within 45 days of his final discharge, or (2) has returned to that territory after leaving it.

ARTICLE X
Capital Punishment

If the crime for which extradition is requested is punishable by death under the law of the requesting Party, and if in respect of such crime the *death penalty is not provided for* by the law of the requested Party or is not normally carried out, extradition may be refused unless the requesting Party gives such assurance as the requested Party considers sufficient that the death penalty will not be carried out.

ARTICLE XI
Provisional Arrest

(1) In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. The competent authorities of the requested Party shall decide the matter in accordance with its laws.

(2) The request for provisional arrest shall state that the documents mentioned in Article XVII exist and that it is intended to send a request for extradition. It shall also state for what crime extradition will be requested and when and where such crime was committed and shall so far as possible give a description of the person sought.

(3) A request for provisional arrest shall be sent in Indonesia, to the National Central Bureau (N.C.B.) Indonesia Interpol, and in the Philippines to the National Bureau of Investigation, either through the diplomatic channels or direct by post or telegraph or through the International Criminal Police Organization (INTERPOL).

(4) The requesting authority shall be informed without delay of the result of its request.

(5) Provisional arrest may be terminated if, within a period of 20 days after arrest, the requested Party has not re-

ceived the request for extradition and the documents mentioned in Article XVII.

(6) Release from provisional arrest shall not prejudice rearrest and extradition if a request for extradition is received subsequently.

ARTICLE XII
Surrender of the Person to be Extradited

(1) The requested Party shall inform the requesting Party through the diplomatic channels of its decision with regard to the request for extradition.

(2) Reasons shall be given for any rejection.

(3) If the request is agreed to, the requesting Party shall be informed of the place and date of surrender and of the length of time for which the person claimed was detained with a view to surrender. Subject to the provisions of paragraph (5) of this Article, if the person claimed has not been taken over on the appointed date, he may be released after the expiry of 30 days and the requested Party may refuse to extradite him for the same offense.

(5) If circumstances beyond its control prevent a Party from surrendering or taking over the person to be extradited, it shall notify the other party. The two parties shall agree on a new date for surrender and the provisions of paragraph (4) of this Article shall apply.

ARTICLE XIII
Postponed Surrender

The requested party may, after making its decision on the request for extradition, postpone the surrender of the person claimed in order that he may be proceeded against by that Party or, if he has already been convicted, in order that he may serve his sentence in the territory of that Party for a crime other than that for which extradition is requested.

ARTICLE XIV
Handing over of Property

(1) The requested Party shall, insofar as its law permits and at the request of the requesting Party, seize and hand over property:

(a) which may be required as evidence, or

(b) which has been acquired as a result of the crime and which, at the time of the arrest, is found in the possession of the person claimed or discovered subsequently.

(2) The property mentioned in paragraph (1) of this Article shall be handed over even if extradition, having been agreed to, cannot be carried out owing to the death or escape of the person claimed.

(3) When the said property is liable to seizure or confiscation in the territory of the requested Party, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it be returned.

(4) Any right which the requested Party or any other State may have acquired in the said property shall be preserved. Where these rights exist, the property shall be returned without charge to the requested Party as soon as possible after the trial.

ARTICLE XV
Procedure

The procedure with regard to extradition and provisional arrest of the person requested to be extradited shall be governed solely by the law of the requested Party.

ARTICLE XVI
Expenses

Expenses incurred in the territory of the requested Party by extradition shall be borne by that Party.

ARTICLE XVII
Request and Supporting Documents

(1) A request for extradition shall be in writing and sent in Indonesia to the Minister of Justice, and in the Philippines to the Secretary of Justice, through the diplomatic channels.

(2) The request shall be supported by:

(a) the original or an authenticated copy of the conviction and sentence immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting Party.

(b) a statement of the crime for which extradition is requested. The time and place of its commission, its legal des-

cription and a reference to the relevant legal provisions shall be set out as accurately as possible; and

(c) a copy of the relevant enactment or, where this is not possible, a statement of the relevant law, and as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality.

(3) The documents to be used in extradition proceedings shall be drawn up in the English language.

ARTICLE XVIII
Multiple Requests

A contracting Party which receives two or more requests for the extradition of the same person either for the same crime, or for different crimes, shall determine to which of the requesting States it shall extradite the person sought, taking into consideration the circumstances and particularly the possibility of a later extradition between the requesting States, the seriousness of each crime, in the place where the crime was committed, the nationality of the person sought, the dates upon which the requests were received and the provisions of any extradition agreements between that Party and the other requesting State or States.

ARTICLE XIX
Settlement of Disputes

Any dispute between the two Parties arising out of the interpretation or implementation of this Treaty shall be settled peacefully by consultation or negotiations.

ARTICLE XX
Transitional Provisions

A crime commenced prior to the date this Treaty enters into force but completed after the date this Treaty enters into force shall be extradited pursuant to this Treaty.

ARTICLE XXI
Entry into force

This Treaty shall enter into force on the date of exchange of Instruments of Ratification.

ARTICLE XXII
Termination

This Treat may be terminated at any time by either Party giving the other six months' prior notice of its intention to do so. Such termination shall not prejudice any proceedings commenced prior to the giving of such notice.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Treaty.

Done in triplicate at Jakarta, Indonesia, on the 10th day of February, 1976, in the Pilipino, Indonesian and English languages, all the texts being equally authentic. In case of divergence, the English text shall prevail.

FOR THE GOVERNMENT OF THE
REPUBLIC OF THE PHILIPPINES:
(Sgd.) VICENTE ABAD SANTOS

FOR THE GOVERNMENT OF THE
REPUBLIC OF INDONESIA:
(Sgd.) MOCHTAR KASUMAATMATJA

APPENDIX "B"

PRESIDENTIAL DECREE NO. 1069 PRESCRIBING THE PROCEDURE FOR THE EXTRADITION OF PERSONS WHO HAVE COMMITTED CRIMES IN A FOREIGN COUNTRY.

WHEREAS, under the Constitution the Philippines adopts the generally accepted principles of international law as part of the law of the land, and adheres to the policy of peace, equality, justice, freedom, cooperation and amity with all nations;

WHEREAS, the suppression of crime is the concern not only of the state where it is committed but also of any other state to which the criminal may have escaped, because it saps the foundation of social life and is an outrage upon humanity at large, and it is in the interest of civilized communities that crimes should not go unpunished;

WHEREAS, in recognition of this principle the Philippines recently concluded an extradition treaty with the Republic of Indonesia, and intends to conclude similar treaties with other interested countries;

WHEREAS, there is need for rules to guide the executive department and the courts in the proper implementation of the extradition treaties to which the Philippines is a signatory.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree the following:

SECTION 1. *Short Title.*—This Decree shall be known as the "Philippine Extradition Law".

SEC. 2. *Defnition of Terms.*—When used in this law, the following terms shall, unless the context otherwise indicates, have meanings respectively assigned to them:

(a) "Extradition"—The removal of an accused from the Philippines with the object of placing him at the disposal of foreign authorities to enable the requesting State or government to hold in connection with any criminal investigation directed against him or the execution of a penalty imposed on him under the penal or criminal law of the requesting state or government.

(b) "Extradition Treaty or Convention" — An extradition agreement between the Republic of the Philippines and one or more foreign states or governments.

(c) "Accused"—The person who is, or is suspected of being, within the territorial jurisdiction of the Philippines, and whose extradition has been requested by a foreign state or government.

(d) "Requesting State or Government" — The foreign state or government from which the request for extradition has emanated.

(e) "Foreign Diplomat"—Any authorized diplomatic representative of the requesting state or government and recognized as such by the Secretary of Foreign Affairs.

(f) "Secretary of Foreign Affairs"—The head of the Department of Foreign Affairs of the Republic of the Philippines, or in his absence, any official acting on his behalf or temporarily occupying and discharging the duties of that position.

SEC. 3. *Aims of Extradition.*—Extradition may be granted only pursuant to a treaty or convention, and with a view to:

(a) A criminal investigation instituted by authorities of the requesting state or government charging the accused with an offense punishable under the laws both of the requesting state or government and the Republic of the Philippines by imprisonment or other form of deprivation of liberty for a period stipulated in the relevant extradition treaty or convention; or

(b) The execution of a prison sentence imposed by a court of the requesting state or government, with such duration as that stipulated in the relevant extradition treaty or convention, to be served in the jurisdiction of and as a punishment for an offense committed by the accused within the territorial jurisdiction of the requesting state or government.

SEC. 4. *Request; By whom made; Requirements.*—

(1) Any foreign state or government with which the Republic of the Philippines has entered into extradition treaty or convention, and only when the relevant treaty or convention, remains in force, may request for the extradition of any accused who is or suspected of being in the territorial jurisdiction of the Philippines.

(2) The request shall be made by the Foreign Diplomat of the requesting state or government, addressed to the Secretary of Foreign Affairs, and shall be accompanied by:

(a) The original or an authentic copy of either—

(1) the decision or sentence imposed upon the accused by the court of the requesting state or government; or

(2) the criminal charge and the warrant of arrest issued by the authority of the requesting state or government having jurisdiction of the matter or some other instruments having the equivalent legal force.

(b) A recital of the acts for which extradition is requested, with the fullest particulars as to the name and identity of the accused, his whereabouts in the Philippines, if known, the acts or omissions complained of, and the time and place of the commission of these acts;

(c) The text of the applicable law or a statement of the contents of said law, and the designation or description of the offense by the law, sufficient for evaluation of the request; and

(d) Such other documents or information in support of the request.

SEC. 5. *Duty of Secretary of Foreign Affairs; Referral of Request; Filing of Petition.*—(1) Unless it appears to the Secretary of Foreign Affairs that the request fails to meet the requirements of this law and the relevant treaty or convention, he shall forward the request together with the related documents to the Secretary of Justice, who shall immediately designate and authorize an attorney in his office to take charge of the case.

(2) The attorney so designated shall file a written petition with the proper Court of First Instance of the province or city having jurisdiction of the place, with a prayer that the court take the request under consideration and shall attach to the petition all related documents. The filing of the petition and the service of the summons to the accused shall be free from the payment of docket and sheriff's fees.

(3) The Court of First Instance with which the petition shall have been filed shall have and continue to have the exclusive power to hear and decide the case, regardless of the subsequent whereabouts of the accused, or the change or changes of his place of residence.

SEC. 6. *Issuance of Summons; Temporary Arrest; Hearing, Service of Notices.*—(1) Immediately upon receipt of the petition, the presiding judge of the court shall, as soon as practicable, summon the accused to appear and to answer the petition on the day and hour fixed in the order. We may issue a warrant for the immediate arrest of the accused which may be served any where within the Philippines if it appears to the presiding judge that the immediate arrest and temporary detention of the accused will best serve the ends of justice. Upon receipt of the answer, or should the ac-

cused after having received the summons fail to answer within the time fixed, the presiding judge shall hear the case or set another date for the hearing thereof.

(2) The order and notice as well as a copy of the warrant of arrest, if issued, shall be promptly served each upon the accused and the attorney having charge of the case.

SEC. 7. *Appointment of Counsel de Oficio.*—If on the date set for the hearing the accused does not have a legal counsel, the presiding judge shall appoint any law practitioner residing within his territorial jurisdiction as counsel de officio for the accused to assist him in the hearing.

SEC. 8. *Hearing in Public; Exception; Legal Representation.*

(1) The hearing shall be public unless the accused requests, with leave of court, that it be conducted in chamber.

(2) The attorney having charge of the case may upon request represent the requesting state or government throughout the proceedings. The requesting state or government may, however, retain private counsel to represent it for particular extradition case.

(3) Should the accused fail to appear on the date set for hearing, or if he is not under detention, the court shall forthwith issue warrant for this arrest which may be served upon the accused anywhere in the Philippines.

SEC. 9. *Nature and Conduct of Proceedings.*—(1) In the hearing, the provisions of the Rules of Court insofar as practicable and not inconsistent with the summary nature of the proceedings, shall apply to extradition cases, and the hearing shall be conducted in such a maner as to arrive at a fair and speedy disposition of the case.

(2) Sworn statements offered in evidence at the hearing of any extradition case shall be received and admitted as evidence if properly and legally authenticated by the principal diplomatic or consular officer of the Republic of the Philippines residing in the requesting state.

SEC. 10. *Decision.*—Upon conclusion of the hearing, the court shall render a decision granting the extradition, and giving his reasons therefor upon showing of the existence of a *prima facie* case. Otherwise, it shall dismiss the petition.

SEC. 11. *Service of Decision.*—The decision of the court shall be promptly served on the accused if he was not present at reading thereof, and the clerk of court shall immediately forward two copies thereof to the Secretary of Foreign Affairs through the Department of Justice.

SEC. 12. *Appeal by Accused; Stay of Execution*

(1) the accused may, within 10 days from receipt of the decision of the Court of First Instance granting extradition, appeal to the Court of Appeals, whose decision in extradition cases shall be final and immediately executory.

(2) The appeal shall stay the execution of the decision of the Court of First Instance.

SEC. 13. *Application of Rules of Court.*—The provisions of the Rules of Court governing appeal in criminal cases in the Court of Appeals shall apply in appeal in Extradition cases, except that the parties may file typewritten or mineograph copies of their brief within 15 days from receipt of notice to file such briefs.

SEC. 14. *Service of Decision of Court of Appeals.*—The accused and the Secretary of Foreign Affairs, through the Department of Justice, shall each be promptly served with copies of the decision of the Court of Appeals.

SEC. 15. *Concurrent Request for Extradition.*—In case extradition of the same person has been requested by two or more states, the Secretary of Foreign Affairs, after consultation with the Secretary of Justice, shall decide which of the several requests shall be first considered, and copies of the former's decision thereon shall promptly be forwarded to the attorney having charge of the case, if there be one, through the Department of Justice.

SEC. 16. *Surrender of Accused.*—After the decision of the court in an extradition case has become final and executory, the accused shall be placed at the disposal of the authorities of the requesting state or government, at a time and place to be determined by the Secretary of Foreign Affairs, after consultation with the foreign diplomat of the requesting state or government.

SEC. 17. *Seizure and Turn Over of Accused Properties.*—If extradition is granted, articles found in the possession of the accused who has been arrested may be seized upon order of the court at the instance of the requesting state or government, and such articles shall be delivered to the foreign diplomat of the requesting state or government who shall issue the corresponding receipt therefor.

SEC. 18. *Costs and Express; By Whom Paid.*—Except when the relevant extradition treaty provides otherwise, all costs or expenses incurred in any extradition proceeding and in apprehending, securing and transmitting an accused shall be paid by the requesting state or government. The Secretary of Justice shall certify to the Secretary of Foreign Affairs the amounts to be paid by the requesting state or government on account of expenses and costs,

and the Secretary of Foreign Affairs shall cause the amounts to be collected and transmitted to the Secretary of Justice for deposit in the National Treasury of the Philippines.

SEC. 19. *Service of Court Processes.*—All processes emanating from the court in connection with extradition cases shall be served or executed by the Sheriff of the province or city concerned or of any member of any law enforcement agency.

SEC. 20. *Provisional Arrest.*—(a) In case of urgency, the requesting state may, pursuant to the relevant treaty or convention and while the same remains in force, request for the provisional arrest of the accused pending receipt of the request for extradition made in accordance with Section 4 of this Decree.

(b) A request for provisional arrest shal be sent to the Director of the National Bureau of Investigation, Manila, either through the diplomatic channels or direct by post or telegraph.

(c) the Director of the National Bureau of Investigation or any official acting on his behalf shall upon receipt of the request immediately secure a warrant for the provisional arrest of the accused from the presiding judge of the Court of First Instance of the province or city having jurisdiction of the place, who shall issue the warrant for the provisional arrest of the accused. The Director of the National Bureau of Investigation through the Secretary of Foreign Affairs shall inform the requesting state of the result of its request.

(d) If within a period of 20 days after the provisional arrest the Secretary of Foreign Affairs has not received the request for extradition and the documents mentioned in Section 4 of this Decree, the accused shall be released from custody.

(e) Release from provisional arrest shall not prejudice rearrest and extradition of the accused if a request for extradition is received subsequently in accordance with the relevant treaty of convention.

SEC. 21. *Effectivity.*—This Decree shall take effect immediately and its provisions shall be in force during the existence of any extradition treaty or convention with, and only in respect of, any foreign state or government.

DONE in the City of Manila, this 13th day of January in the year of Our Lord, nineteen hundred and seventy-seven.