

FIFTEENTH CONGRESS OF THE REPUBLIC }
OF THE PHILIPPINES }
Third Regular Session

Office of the Secretary
158-5

SENATE

P.S. RES. NO. 937

AN

Prepared by the Committee on Foreign Relations

**RESOLUTION
CONCURRING IN THE RATIFICATION OF THE
TREATY ON EXTRADITION BETWEEN THE
REPUBLIC OF THE PHILIPPINES AND THE KINGDOM OF SPAIN**

WHEREAS, the Constitution, Article VII, Section 21, states that, "*No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the members of the Senate*";

WHEREAS, the *Treaty on Extradition between the Republic of the Philippines and the Kingdom of Spain* was signed in Manila on 2 March 2004;

WHEREAS, The Treaty provides for the general obligation between the Contracting Parties to extradite to each other, in accordance with the provisions of the Treaty, any person who is wanted for prosecution, imposition or enforcement of a sentence in the Requesting State for an extraditable offense;

WHEREAS, the Treaty strengthens the bilateral cooperation between the Philippines and Spain in the investigation, prosecution and suppression of crimes, particularly transnational crimes;

WHEREAS, the increasing frequency of transnational crimes, such as: terrorism; money laundering; corruption; human trafficking; as well as, other violations of human rights, necessitates this Treaty as a vital operational tool in the pursuit of justice and public safety;

WHEREAS, the Treaty provides under Article 23 that it shall enter into force thirty (30) days after the date on which the Contracting Parties have notified each other in writing that their respective requirements for the entry into force of the Treaty have been met;

WHEREAS, the President of the Philippines ratified the *Treaty on Extradition between the Republic of the Philippines and the Kingdom of Spain* on 23 December 2010 and has accordingly submitted it to the Senate for concurrence in accordance with the Constitution;

WHEREAS, in the hearing conducted by the Senate Committee on

Foreign Relations on 4 February 2012, the following government agencies have endorsed the concurrence in the ratification of the *Treaty on Extradition between the Republic of the Philippines and the Kingdom of Spain*:

1. Department of Foreign Affairs (DFA);
2. Department of Justice (DOJ);
3. Bureau of Immigration; and
4. Bureau of Corrections

NOW, THEREFORE, be it resolved that the Senate of the Philippines concur, as it hereby concurs, in the ratification of the *Treaty on Extradition between the Republic of the Philippines and the Kingdom of Spain*.

Adopted,



LOREN LEGARDA
Chair

**TREATY ON EXTRADITION
BETWEEN THE REPUBLIC OF THE PHILIPPINES
AND THE KINGDOM OF SPAIN**

The Republic of the Philippines and the Kingdom of Spain, hereinafter referred to as Contracting Parties;

Desiring to make more effective the cooperation of the two countries in the suppression of crime by concluding a treaty on extradition,

Have agreed as follows:

ARTICLE 1

Obligation to Extradite


The Contracting Parties agree to extradite to each other, in accordance with the provisions of this Treaty, any person who is wanted for prosecution, imposition or enforcement of a sentence in the Requesting State for an extraditable offence.

ARTICLE 2

Extraditable Offences

1. For the purpose of this Treaty, extradition shall be granted for acts or omissions which are punishable under the laws of both Contracting Parties by imprisonment or other deprivation of liberty for a maximum period of at least one year or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty, extradition shall be granted only if a period of at least six months of the penalty remains to be served.
2. For the purpose of this Article:
 - a) it shall not matter whether the laws of the Contracting Parties place the acts or omissions constituting the offence within the same category of offences or denominate the offence by different terminology; and
 - b) the totality of the acts or omissions alleged against the person whose extradition is requested shall be taken into account in determining the constituent elements of the offence in the Requested State.
3. Subject to paragraph 1, an offence of a fiscal character is an extraditable offence.

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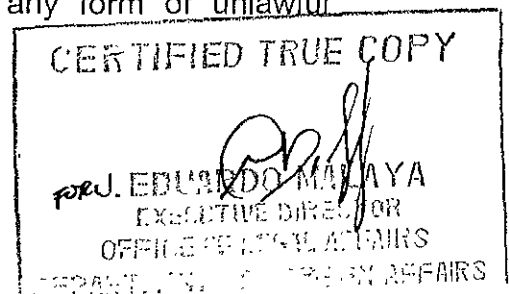

RAJ. EDUARDO MALAYA
EXECUTIVE DIRECTOR
OFFICE OF LEGAL AFFAIRS

4. If the request for extradition relates to a number of offences, each of which is punishable under the laws of both Contracting Parties, but some of which do not meet the other requirements of paragraph 1, the Requested State may also grant extradition for such offences.

ARTICLE 3

Mandatory Refusal of Extradition

1. Extradition shall not be granted in any of the following circumstances:
 - a) when the offence for which extradition is requested is considered by the Requested State to be a political offence;
 - b) when there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality or political beliefs;
 - c) when the offence for which extradition is requested is an offence under military law, which is not an offence under the ordinary criminal law of the Contracting Parties;
 - d) when final judgment has been passed in the Requested State in respect of the offence for which the person's extradition is requested; or
 - e) when the prosecution or the enforcement of the sentence for the offence identified in the request for extradition would be barred by lapse of time or by any other reason under the law of the Requested State.
2. For the purpose of paragraph 1 of this Article, political offence shall not include:
 - a) the taking or attempted taking of the life of a Head of State or Head of Government or a member of his or her family;
 - b) an offence for which either of the Contracting Parties has the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to its competent authorities for the purpose of prosecution;
 - c) murder, manslaughter or other intentional homicide, malicious wounding or inflicting grievous bodily harm;
 - d) an offence involving kidnapping, abduction, or any form of unlawful detention, including the taking of a hostage;



- e) an offence involving the placing or use of automatic firearms, explosives, incendiaries or destructive devices or substance capable of endangering life or of causing grievous bodily harm or substantial property damage;
- f) any offence related to terrorism; and
- g) the attempt or conspiracy to commit any of the above offences, or involvement as accomplice of a person who commits or attempts to commit any of the above crimes.

ARTICLE 4

Discretionary Refusal of Extradition

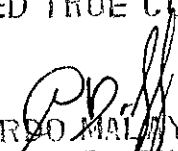
1. Extradition may be refused in any of the following circumstances:
 - a) when a person whose extradition is requested is a national of the Requested State;
 - b) when the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, considers that, in the circumstances of the case, including the age or health of the person whose extradition is requested, the extradition of that person would be unjust or incompatible with humanitarian considerations;
 - c) when the courts of the Requested State have jurisdiction to prosecute the person for the offence for which extradition is requested;
 - d) when the offence was committed outside the territory of the Requesting State and the law of the Requested State does not, in corresponding circumstances, provide for the same jurisdiction.
2. When the Requested State refuses to extradite a national of that State, it shall submit the case to its competent authorities in order that appropriate proceedings may be taken. If the Requested State requires additional documents or evidence, such documents or evidence shall be submitted without charge to that State. The Requesting State shall be informed of any action taken.

ARTICLE 5

Capital Punishment and Life Imprisonment

If the offence for which extradition is requested is punishable by death or life imprisonment under the law of the Requesting State, and if in respect of such

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offence the death penalty or life imprisonment is not provided for by the law of the Requested State or is not normally carried out, extradition shall be refused unless the Requesting State gives such assurances as the Requested State considers sufficient, that the death penalty or life imprisonment will not be carried out.

ARTICLE 6

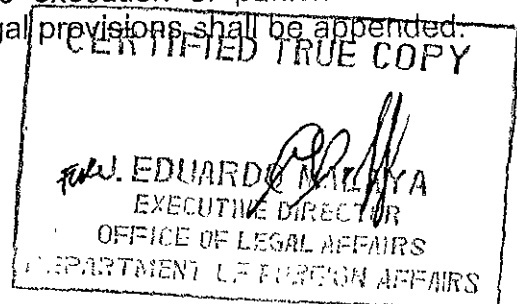
Temporary and Deferred Surrender

1. If the extradition request is granted in the case of a person who is being prosecuted or is serving a sentence in the territory of the Requested State, the Requested State may temporarily surrender the person sought to the Requesting State for the purpose of prosecution. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after the conclusion of the proceedings against that person, in accordance with conditions to be determined by agreement between the Contracting Parties.
2. The Requested State may postpone the extradition proceedings against a person who is being prosecuted or who is serving a sentence in that State. The postponement may continue until the prosecution of the person sought has been concluded or until such person has served any sentence imposed.

ARTICLE 7

Presentation of a Request and Documents to be Submitted

1. Requests for extradition and all other documents shall be sent through diplomatic channels.
2. In all cases, the following documents shall be submitted in support of a request for extradition:
 - a) information about the description, identity, location and nationality of the person sought; and
 - b) a document from the judicial authorities or from the relevant Ministry or other agencies concerning the circumstances of the acts or omissions constituting each offence for which extradition is requested, including the place and date of the commission of the offence, the nature of the offence, the applicable legal provision, and any provision describing any time limit on the prosecution or the execution of punishment for the offence. A copy of the text of such legal provisions shall be appended.



3. In the case of a person accused of an offence, the request shall be accompanied by the original or a certified true copy of the warrant of arrest and the criminal charge issued in the Requesting State.
4. In the case of a person sought for the enforcement of a sentence, the request shall be accompanied by:
 - a) the original or a certified true copy of the judgment or document setting out the conviction and sentence to be served; and
 - b) if a portion of the sentence has already been served, a written statement by a competent authority specifying the portion of the sentence which remains to be served.
5. All documents submitted in support of a request for extradition, which have been certified, signed or issued by a judicial or other competent authority of the Requesting State, shall be admitted in extradition proceedings in the Requested State without proof of the signature or of the official character of the person having signed them.

ARTICLE 8

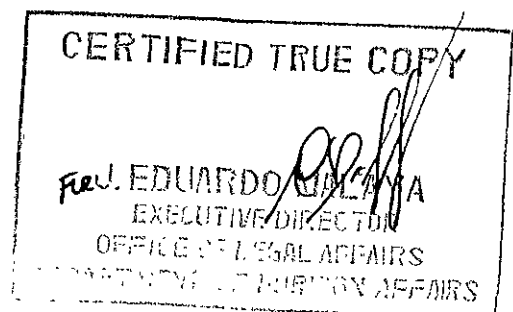
Additional Information

If the Requested State considers that the information provided in support of the request for the extradition of a person is not sufficient to fulfill the requirements of this Treaty, that State may request that additional information be provided within such time as it specifies.

ARTICLE 9

Provisional Arrest

1. In case of urgency, the Requesting State may apply in writing to the competent authorities of the Requested State, through the International Criminal Police Organization (INTERPOL) or through diplomatic channels, for the provisional arrest of the person sought pending the presentation of the formal request for extradition.
2. The application for provisional arrest shall be accompanied by a copy of the court decision or warrant of arrest, a description of the offence, when and where it was committed and the details of the identity of the person sought; and shall contain a statement that an extradition request will be made subsequently.



3. Upon receipt of such an application for provisional arrest, the Requested State shall take the necessary steps to secure the arrest of the person sought and the Requesting State shall be promptly notified of the result of its application.
4. A person arrested upon such application shall be released from custody upon the expiration of sixty days from the date of that person's arrest if a request for that person's extradition, supported by the documents specified in Article 7, has not been received. In such case, the Requested State shall notify the Requesting State as soon as possible.
5. The release of a person pursuant to paragraph 4 of this Article shall not prevent the re-arrest and institution or continuation of proceedings with a view to extraditing the person sought if the request and the supporting documents are received subsequently.

ARTICLE 10

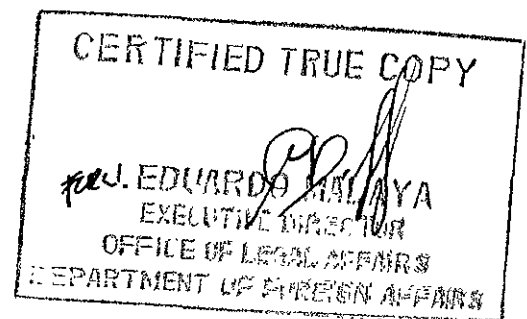
Simplified Procedure of Extradition

Extradition of a person may be granted pursuant to the provisions of this Treaty, notwithstanding that the requirements of Article 7 have not been met, if such person, duly assisted by counsel and having been informed of the extradition request and his rights under extradition proceedings, consents to the extradition before a competent judicial authority.

ARTICLE 11

Competing Extradition Requests

1. When requests are received from a Contracting Party and one or more other states for the extradition of the same person, the Requested State shall determine to which of those states the person is to be extradited and shall notify the other Contracting Party of its decision.
2. In determining to which state a person is to be extradited, the Requested State shall have regard to all relevant circumstances and, in particular, to:
 - a) the relative seriousness of the offences, if the requests relate to different offences;
 - b) the time and place of commission of each offence;
 - c) the respective dates of the requests;
 - d) the nationality of the person; and



e) the habitual place of residence of the person.

ARTICLE 12

Surrender of Person to be Extradited

1. The Requested State shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting State through diplomatic channels. Reasons shall be given for any complete or partial rejection of an extradition request.
2. When extradition of a person for an offence is granted, that person shall be removed from a point of departure in the territory of the Requested State convenient to both Contracting Parties.
3. The Requesting State shall remove the person from the territory of the Requested State within such reasonable period as the Requested State specifies. If the person is not removed within that period, the Requested State may refuse the surrender of such person for the same offence.
4. If circumstances beyond its control prevent a Contracting Party from surrendering or removing the person to be extradited, it shall notify the other State. The Contracting Parties shall agree upon a new period of time for surrender, and the provisions of paragraph 3 of this Article shall apply.
5. Where extradition is granted under this Treaty, the Requesting State shall ensure that the person extradited is brought to trial expeditiously.

ARTICLE 13

Surrender of Property

1. To the extent permitted under the law of the Requested State and subject to the rights of third parties, all property found in the Requested State that has been acquired as a result of the offence or may be required as evidence shall, if the Requesting State so requests, be surrendered if extradition is granted.
2. Subject to the provisions of paragraph 1 of this Article, the above mentioned property shall, if the Requesting State so requests, be surrendered to the Requesting State even if the extradition cannot be carried out by reason of death or escape of the person sought to be extradited.
3. Where the law of the Requested State or the rights of third parties so require, any property so surrendered shall be returned to the Requested State free of charge, if that State so requests.

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OFFICE OF LEGAL AFFAIRS

ARTICLE 14

Rule of Specialty

1. A person who has been extradited shall not be proceeded against, sentenced or detained nor be subjected to any other restriction or personal liberty for any acts or omissions committed prior to that person's surrender, other than that for which the person was extradited, except in the following cases:
 - a) when the Requested State consents; or
 - b) when that person, having had the opportunity to leave the territory of the Requesting State, has not done so within forty-five days of that person's final discharge, or has returned to that territory after leaving it.
2. For the purpose of paragraph 1(a) of this Article, the Requested State may require the submission of the documents referred to in Article 7 and a copy of any statement made by the extradited person in respect of the offence for which consent is requested.

ARTICLE 15

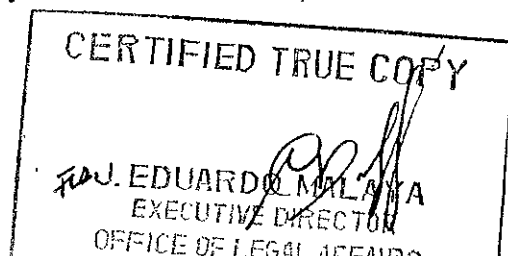
Re-Extradition to a Third State

1. When a person has been surrendered to the Requesting State by the Requested State, the Requesting State shall not extradite that person to any third state for an offence committed before that person's surrender unless:
 - a) the Requested State consents; or
 - b) the person, having had the opportunity to leave the territory of the Requesting State, has not done so within forty-five days of that person's final discharge, or has returned to that territory after leaving it.
2. Before responding to a request pursuant to paragraph 1(a) of this Article, the Requested State may require the production of the documents in support of the request of the third state.

ARTICLE 16

Transit

1. When a third state has granted the extradition of a person to one of the Contracting Parties, that Contracting Party shall seek transit permission for



that person from the other Contracting Party in the case of scheduled stopover in the latter State's territory.

2. The Contracting Party requested for transit may require such documents as it considers necessary to make the decision on transit.

ARTICLE 17

Language

All documents submitted in accordance with this Treaty shall be in English and in Spanish

ARTICLE 18

Mutual Legal Assistance in Extradition

The Requested State shall, upon request and to the extent permitted by its law, provide legal assistance to the Requesting State relating to the offence for which extradition has been requested.

ARTICLE 19

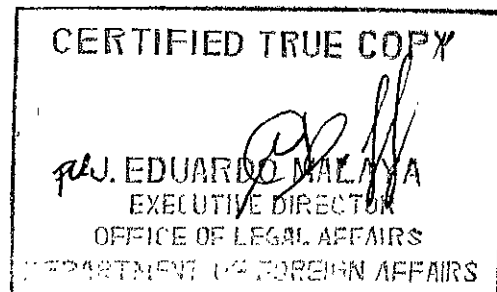
Expenses

1. The Requested State shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition.
2. The Requested State shall bear the expenses incurred in its territory for the arrest and detention of the person whose extradition is requested, until the person is surrendered.
3. The Requesting State shall bear the expenses incurred in conveying the person extradited from the territory of the Requested State.

ARTICLE 20

Consultation

The Central Authorities of the Contracting Parties may consult with each other to promote the most effective use of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.



ARTICLE 21

Settlement of Disputes

Any disputes arising from the interpretation or application of this Treaty shall be settled through diplomatic channels.

ARTICLE 22

Application

This Treaty shall apply to any request presented and offences committed after its entry into force, even if the offence for which extradition is requested was committed before that date.

ARTICLE 23

Entry into Force, Duration and Termination

1. This Treaty shall enter into force thirty (30) days after the date on which the Contracting Parties have notified each other in writing that their respective requirements for the entry into force of this Treaty have been met.
2. This Treaty shall have an indefinite duration.
3. Either Contracting Party may terminate this Treaty by notice in writing at any time and it shall cease to be in force on the one hundred and eightieth (180th) day after the day on which notice is received by the other Contracting Party.

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

DONE at Manila on the *2nd* day of *March* 2004, in duplicate in the English and Spanish languages, each version being equally authentic.

FOR THE REPUBLIC OF THE
PHILIPPINES

Ma. Merceditas N. Gutierrez
Ma. Merceditas N. Gutierrez
Acting Justice Secretary

FOR THE KINGDOM
OF SPAIN

Ramon Gil-Casares Satrustegui
Ramon Gil-Casares Satrustegui
Secretary of State
for Foreign Affairs

