

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

12 FEB 05 14:55

SENATE

P.S. RES. NO. 938

Prepared by the Committee on Foreign Relations

**RESOLUTION
CONCURRING IN THE RATIFICATION OF THE
EXTRADITION TREATY BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES
AND THE
GOVERNMENT OF THE REPUBLIC OF INDIA**

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 *Extradition Treaty between the Government of the Republic of the Philippines and the Government of the Republic of India* 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 India 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 *Extradition Treaty between the Government of the Republic of the Philippines and the*

Government of the Republic of India 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 *Extradition Treaty between the Government of the Republic of the Philippines and the Government of the Republic of India*.

Adopted,



LOREN LEGARDA

Chair

**EXTRADITION TREATY
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND
THE GOVERNMENT OF THE REPUBLIC OF INDIA**

The Government of the Republic of the Philippines and the Government of the Republic of India, hereinafter referred to as the Contracting States;

Desiring to make more effective the cooperation of the two countries in the suppression of crime by making further provision for the reciprocal extradition of criminal offenders;

Recognizing that concrete steps are necessary to combat crime;

Have agreed as follows:

**Article 1
Obligation to Extradite**

- (1) Each Contracting State undertakes to extradite to the other, in the circumstances and subject to the conditions specified in this Treaty, any person who, being accused or having been convicted of an extraditable offence as described in Article 2 committed within the territory of the Requesting State, is found within the territory of the other State, whether such offence was committed before or after the entry into force of this Treaty.
- (2) Extradition shall also be available in respect of an extraditable offence as described in Article 2 committed outside the territory of the Requesting State but in respect of which it has jurisdiction, if the Requested State would, in corresponding circumstances, have jurisdiction over such an offence.
- (3) Extradition shall be available for an extraditable offence as described in Article 2 if it is committed in a third State by a national of the Requesting State and the Requesting State bases its jurisdiction on the nationality of the offender.

**Article 2
Extraditable Offences**

- (1) An offence shall be an extraditable offence if it is punishable under the laws of both Contracting States by imprisonment for a period of at least one year.
- (2) An offence may be an extraditable offence notwithstanding that it relates to taxation or revenue or is one of a purely fiscal character.

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- (3) An offence shall also be extraditable notwithstanding that any or all of the essential elements or acts constituting the offence were committed in the territory of the Requested State.

**Article 3
Extradition of Nationals**

Nothing in this Treaty shall preclude the extradition by the Requested State of its nationals in respect of an extraditable offence.

**Article 4
The Political Offence Exception**

- (1) Extradition may be refused if the offence involved is of a political character.
- (2) For the purpose of this Treaty the following offences shall not be regarded as offences of a political character:
- a) an offence for which both Contracting States have the obligation, pursuant to an international treaty/agreement to which both are Parties, to extradite the person sought or to submit the case of their competent authorities for decision as to prosecution;
 - b) 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;
 - c) murder, manslaughter or culpable 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 firearms, explosives, incendiaries or destructive devices or substances capable of endangering life or of causing grievous bodily harm or substantial property damage;
 - f) the unlawful making or possession of an explosive substance, firearm or ammunition; and
 - g) abetting, attempting to commit, or inciting to commit any of the foregoing offences or participating as an accomplice of a person who commits or attempts to commit such an offence.

**Article 5
Extradition and Prosecution**

- (1) The request for extradition may be refused by the Requested State if the person whose extradition is sought may be tried for the extraditable offence in the courts of that State.

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- (2) Where the Requested State refuses a request for extradition for the reason set out in paragraph 1 of this Article, it shall submit the case to its competent authorities so that prosecution may be considered. Those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State.
- (3) If the competent authorities decide not to prosecute in such a case, the request for extradition shall be reconsidered in accordance with this Treaty.

Article 6 Grounds for Refusal of Extradition

- (1) A person may not be extradited:
- a) if the offence of which he is accused or convicted is a military offence which is not also an offence under the general criminal law;
 - b) if the person sought to be extradited was previously tried for the same offence for which extradition is requested and was acquitted or was convicted and had completed the sentence or is undergoing it;
 - c) if the person whose extradition is requested cannot, according to the laws of either Contracting State, be prosecuted or punished by reason of lapse of time;
 - d) if a person whose extradition is sought is being investigated or tried in the Requested State for the same offence for which his extradition is requested.
- (2) If a person convicted of such an offence is wanted for the enforcement of a sentence of imprisonment, extradition shall be granted only if a period of at least six (6) months of the imprisonment remains to be served.
- (3) A person may not be extradited if he would, if proceeded against in the territory of the Requested State for the offence for which his extradition is requested, be entitled to be discharged under any rule of law of the Requested State relating to previous acquittal or conviction.

Article 7 Postponement of Surrender

When the person sought is being proceeded against or is serving a sentence in the Requested State for an offence other than that for which extradition is requested, the Requested State may surrender the person sought or postpone surrender until the conclusion of the proceedings or the service of any sentence that may have been imposed.

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J. EDUARDO

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FELIX R. YBARDOLAZA

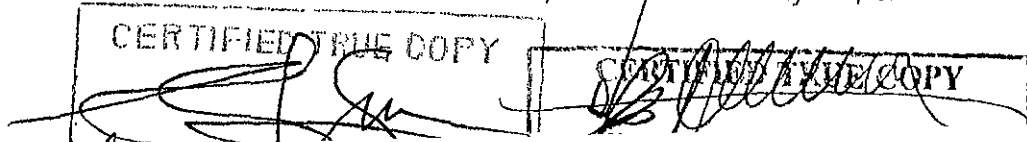
**Article 8
Extradition Procedures**

- (1) The request for extradition under this Treaty shall be made through the diplomatic channels.
- (2) The request shall be accompanied by:
 - a) as accurate a description as possible of the person sought, together with any other information which would help to establish his identity, nationality, and residence;
 - b) a statement of the facts of the offence for which extradition is requested; and
 - c) the text, if any, of the law:
 - (i) defining that offence; and
 - (ii) prescribing the punishment for that offence.
- (3) If the request relates to an accused person, it must also be accompanied by a warrant of arrest issued by a judge, magistrate or other competent authority in the territory of the Requesting State and by such evidence as, according to the law of the Requested State, would justify his committal for trial if the offence had been committed in the territory of the Requested State, including evidence that the person requested is the person to whom the warrant of arrest refers.
- (4) If the request relates to a person already convicted and sentenced, it shall also be accompanied by a certificate of the conviction and sentence.
- (5) In relation to a convicted person who was not present at his trial, the person shall be treated for the purposes of paragraph (4) of this Article as if he had been accused of the offence for which he was convicted.
- (6) If the Requested State considers that the evidence produced or information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within such time as the Requested State shall require.

**Article 9
Provisional Arrest**

- (1) In urgent cases the person sought may, in accordance with the law of the Requested State, be provisionally arrested on the application of the competent authorities of the Requesting State. The application shall contain an indication of intention to request the extradition of that person and shall be accompanied by a copy of the judgment of conviction or warrant of arrest, as the case may be, a

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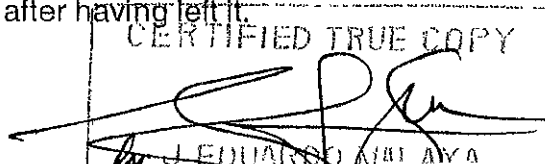


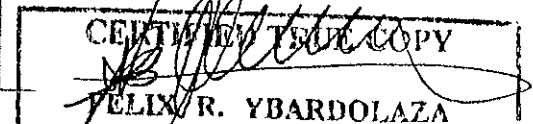
description of the offence, when and where it was committed and the details of the identity of the person sought.

- (2) The request for provisional arrest may be made through diplomatic channels or directly between the Department of Justice of the Philippines and the Ministry of Home Affairs of India or through the International Criminal Police Organization (INTERPOL) by any means acceptable to the Requested State, such as post, telegraph or facsimile machine, etc.
- (3) A person arrested upon such an application shall be set at liberty upon the expiration of 60 days from the date of his arrest if the request for his extradition is not received by the Ministry/Department of Foreign Affairs of the Requested State. This provision shall not prevent the institution of further proceedings for the extradition of the person sought if a request is subsequently received.

Article 10
Rule of Speciality

- (1) Any person who is returned to the territory of the Requesting State under this Treaty shall not, during the period described in paragraph (2) of this Article, be dealt with in the territory of the Requesting State for or in respect of any offence committed before he was returned to that territory other than:
 - a) the offence in respect of which he was returned;
 - b) any lesser offence disclosed by the facts proved for the purposes of securing his return other than an offence in relation to which an order for his return could not lawfully be made; or
 - c) any other offence in respect of which the Requested Party may consent to his being dealt with other than an offence in relation to which an order for his return could not lawfully be made or would not in fact be made.
- (2) The period referred to in paragraph (1) of this Article is the period beginning with the day of his arrival under this Treaty and ending forty-five days after the first subsequent day on which he has the opportunity to leave the territory of the Requesting State.
- (3) The provisions of paragraph (1) of this Article shall not apply to offences committed after the return of a person under this Treaty or matters arising in relation to such offences.
- (4) A person shall not be re-extradited to a third State, except when, having had an opportunity to leave the territory of the State to which he has been surrendered, he has not done so within forty-five days of his final discharge, or has returned to that territory after having left it.

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ARTICLE 11
Evidence

- (1) The authorities of the Requested State shall admit as evidence, in any proceedings for extradition, if duly authenticated, any statement made under oath or by way of affirmation, any warrant and any certificate or judicial document stating the fact of a conviction. A document is duly authenticated for the purpose of this Treaty if it purports to be:
- a) signed or certified by a Judge, Magistrate or other authorized officer in or of the Requesting State;
 - b) verified by oath or affirmation or sealed with an official or public seal of the Requesting State or of a Minister of State, or of a Department or officer of the Government of the Requesting State; and
 - c) certified by a diplomatic or consular officer of the Requested State accredited to the Requesting State.

Article 12
Competing Requests

If the Requested State receives requests from the other Contracting State and from any other State or States for the extradition of the same person either for the same offence or for a different offence, the executive authority of the Requested State shall determine to which State it will surrender the person. In making the decision, the Requested State shall consider all relevant factors, including, but not limited to:

- a) whether the requests were made pursuant to a treaty;
- b) the place where the offence(s) was committed;
- c) the respective interests of the Requesting States;
- d) the gravity of the offences;
- e) the nationality of the victim(s);
- f) the possibility of further extradition between the Requesting States; and
- g) the chronological order in which the requests were received from the Requesting States.

Article 13
Capital Punishment

- (1) When the offence for which extradition is requested is punishable by death under the laws of the Requesting State and the laws of the Requested State do not permit such punishment for that offence, extradition may be refused unless the Requesting State provides such assurances as the Requested State considers sufficient that if the death penalty is imposed, it will not be carried out.

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- (2) In instances in which the Requesting State provides an assurance in accordance with paragraph 1 of this Article, the death penalty, if imposed by the courts of the Requesting State, shall not be carried out.

Article 14
Decision and Surrender

- (1) The Requested State shall promptly notify the Requesting State through diplomatic channels of its decision on the request for extradition.
- (2) If the request is denied in whole or in part, the Requested State shall communicate the reasons for the denial. The Requested State shall provide copies of relevant judicial decisions upon request.
- (3) If the request for extradition is granted, the authorities of the Contracting States shall agree on the time and place for the surrender of the person sought.
- (4) If the person sought is not removed from the territory of the Requested State within one month or such longer period as may be permitted under the law of the Requested State, that person may be discharged from custody, and the Requested State may subsequently refuse extradition for the same offence.

Article 15
Voluntary Return

If the person sought consents in writing to surrender to the Requesting State, the Requested State may surrender the person as expeditiously as possible without further proceedings.

Article 16
Surrender of Property

- (1) When a request for extradition is granted, the Requested State shall, upon request and so far as its law allows, hand over to the Requesting State articles (including sums of money) which may serve as proof or evidence of the offence.
- (2) If the articles in question are liable to seizure or confiscation in the territory of the Requested State, the latter may, in connection with pending proceedings, temporarily retain or hand these over on condition that they be returned.

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J. EDUARDO RIVERA NAYAN

- (3) These provisions shall not prejudice the rights of the Requested State or any person other than the person sought. When these rights exist, the articles shall on request be returned to the Requested State without charge as soon as possible after the conclusion of the proceedings.

Article 17
Representation and Expenses

- (1) The Requested State shall advise, assist, appear in court on behalf of the Requesting State, and represent the interests of the Requesting State, in any proceeding arising out of a request for extradition.
- (2) The Requesting State shall bear the expenses related to the English translation of documents and the transportation of the person surrendered. The Requested State shall pay all other expenses incurred in that State by reason of the extradition proceedings.
- (3) Neither State shall make any pecuniary claim against the other State arising out of the arrest, detention, examination or surrender of person(s) sought under this Treaty.

Article 18
Consultation

The appropriate authorities of both the Contracting States may consult with each other directly in connection with the processing of individual cases and in furtherance of maintaining and improving procedures for the implementation of this Treaty.

Article 19
International Obligations

The present Treaty shall not affect the rights and obligations of the Contracting States arising from international conventions/treaties to which they are parties.

Article 20
Applicable Laws

Except where this Treaty provides otherwise, the laws of the Requested State shall be applicable with respect to proceedings relating to extradition.

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Article 21
Ratification and Termination

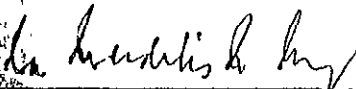
- 1) This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible. It shall enter into force on the date of the exchange of instruments of ratification.
- 2) Either of the Contracting States may terminate this Treaty at any time by giving notice to the other through diplomatic channels, and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice. Such termination shall not affect the continuation of the proceedings instituted or the consideration of request(s) already received.

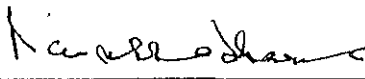
IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

DONE, in duplicate at Manila this 12th day of March 2004, in Hindi and English, both languages being equally authentic. In case of any doubt, the English text shall prevail.

On behalf of the Government of the
Republic of the Philippines

On behalf of the Government of the
Republic of India


MA. MERCEDITAS N. GUTIERREZ
Acting Secretary of Justice
Department of Justice
Republic of the Philippines


NAVREKHA BHARMA
Ambassador Extraordinary and
Plenipotentiary of the
Republic of India


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