

No. 15177

**PHILIPPINES
and
INDONESIA**

**Extradition Treaty (with protocol). Signed at Jakarta on
10 February 1976**

*Authentic texts: Pilipino, Indonesian and English.
Registered by the Philippines on 4 January 1977.*

**PHILIPPINES
et
INDONÉSIE**

**Traité d'extradition (avec protocole). Signé à Jakarta le
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*Textes authentiques : philippin, indonésien et anglais.
Enregistré par les Philippines le 4 janvier 1977.*

EXTRADITION TREATY¹ 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 or 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 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;
17. crimes against the laws relating to firearms, explosives, or incendiary devices.

¹ Came into force on 25 October 1976 by the exchange of the instruments of ratification, which took place at Manila, in accordance with article XXI.

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 Treaty 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.

Article 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 TO 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 SPECIALITY

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, had not done so within 45 days of his final discharge, or 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 law.

(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.), Indonesian 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 received the request for extradition and the documents mentioned in article XVII.

(6) Release from provisional arrest shall not prejudice re-arrest 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.

(4) 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 15 days and shall in any case 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 reason of 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 description 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, when 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 Treaty 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:
VICENTE ABAD SANTOS

For the Government
of the Republic of Indonesia:
MOCHTAR KUSUMAATMADJA

PROTOCOL

The Republic of the Philippines and the Republic of Indonesia desiring to avoid any ambiguity in the interpretation of that part of the Extradition Treaty which touches on its territorial application have agreed on this Protocol:

That the Republic of Indonesia is the sole owner of an island known as Las Palmas (P. Miangas) as a result of the arbitral award made on April 4, 1928 (the United States of America and the Netherlands).

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

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:
[Signed]
VICENTE ABAD SANTOS

For the Government
of the Republic of Indonesia:
[Signed]
MOCHTAR KUSUMAATMADJA