

TREATY ON EXTRADITION BETWEEN THE REPUBLIC OF KOREA AND THE REPUBLIC OF THE PHILIPPINES

Signed at Seoul May 25, 1993

Entered into force November 30, 1996

The Republic of Korea and the Republic of the Philippines (hereinafter referred to as "the Contracting Parties"),

Desiring to make more effective the co-operation of the two countries in the prevention and suppression of crime by concluding a treaty on the reciprocal extradition of offenders,

Have agreed as follows:

Article 1

Obligation to Extradite

Each Contracting Party agrees to extradite to the other, in accordance with the provisions of this Treaty, any person who is wanted for prosecution, trial or for the imposition or execution of a sentence in the territory of the Requesting Party for an extraditable offence.

Article 2

Extraditable Offences

1. For the purposes of this Treaty, extraditable offences are offences however described which are punishable under the laws of both Contracting Parties by deprivation of liberty for a maximum period of at least one year or by a more severe penalty.
2. Where the request for extradition relates to a person sentenced to deprivation of liberty by a court of the Requesting Party for any extraditable offence, extradition shall be granted only if a period of at least six (6) months in the sentence remains to be served.
3. For the purpose of this Article, in determining whether an offence is an offence against the laws of both Contracting Parties:
 - (a) it shall not matter whether the laws of the Contracting Parties place the conduct constituting the offence within the same category of offence or denominate the offence by the same terminology;
 - (b) the totality of the conduct alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the Contracting Parties, the constituent elements of the offence differ.
4. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, foreign exchange control or other revenue matter, extradition may not be refused on the ground that the law of the Requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs, or exchange regulation of the same kind as the law of the Requesting Party.

5. Where the offence has been committed outside the territory of the Requesting Party, extradition shall be granted where the law of the Requested Party provides for the punishment of an offence committed outside its

territory in similar circumstances. Where the law of the Requested Party does not so provide, the Requested Party may, in its discretion, grant extradition.

6. Extradition may be granted pursuant to the provisions of this Treaty in respect of an offence provided that:

- (a) it was an offence in the Requesting Party at the time of the conduct constituting the offence; and
- (b) the conduct alleged would, if it had taken place in the territory of the Requested Party at the time of the making of the request for extradition, have constituted an offence against the law in force in the territory of the Requested Party.

7. 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 paragraphs 1 and 2 of this Article, the Requested Party may grant extradition for such offences provided that the person is to be extradited for at least one extraditable offence.

Article 3

Mandatory Refusal of Extradition

Extradition shall not be granted under this Treaty in any of the following circumstances:

1. when the Requested Party determines that the offence for which extradition is requested is a political offence. Reference to a political offence shall not include the following offences:

- (a) the taking or attempted taking of the life or an attack on the person of a Head of State or Head of Government or a member of his or her family;
- (b) an offence in respect of which the Contracting Parties have the obligation to establish jurisdiction or extradite by reason of a multilateral international agreement to which they are both parties;
- (c) an offence relating to genocide and terrorism; and
- (d) an offence involving kidnapping, abduction or any form of unlawful detention, including the taking of a hostage;

2. when the person sought is being proceeded against or has been tried and discharged or punished in the territory of the Requested Party for the offence for which his extradition is requested;

3. when the prosecution or the punishment for the offence for which extradition is requested would be barred by reasons prescribed under the law of either Contracting Party including a law relating to the lapse of time; and

4. when the Requested Party has well-founded reasons to suppose that the request for extradition has been presented with a view to persecuting or punishing the person sought, by reason of race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of those reasons. The provision of this paragraph, however, shall not apply to the offences mentioned in subparagraphs (a), (b) and (c) of paragraph 1 of this Article.

Article 4

Discretionary Refusal of Extradition

Extradition may be refused under this Treaty in any of the following circumstances:

1. when the offence for which extradition is sought is regarded under the law of the Requested Party as having been committed in whole or in part within its territory;

2. when the offence carries the death penalty under the law of the Requesting Party, unless that Party undertakes that the death penalty will not be sought, or if a sentence of death is imposed it will not be carried out;

3. when the person sought has been finally acquitted or convicted in a third State for the same offence for which extradition is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable; and

4. when, in exceptional cases, the Requested Party while also taking into account the seriousness of the offence and the interests of the Requesting Party deems that, because of the personal circumstances of the person sought, the extradition would be incompatible with humanitarian considerations.

Article 5

Postponed or Temporary Surrender

1. When the person sought is being proceeded against or is serving a sentence in the Requested Party for an offence other than that for which extradition is requested, the Requested Party may surrender the person sought or postpone surrender until the conclusion of the proceedings or the service of the whole or any part of the sentence imposed. The Requested Party shall inform the Requesting Party of any postponement.

2. To the extent permitted by its law, where a person has been found extraditable, the Requested Party may temporarily surrender the person sought for the purposes of prosecution to the Requesting Party in accordance with conditions to be determined between the Contracting Parties. A person who is returned to the Requested Party following a temporary surrender may be finally surrendered to serve any sentence imposed, in accordance with the provisions of this Treaty.

Article 6

Extradition of Nationals

1. Neither of the Contracting Parties shall be bound to deliver up its own nationals under this Treaty but the competent authority of each Contracting Party shall have the power to deliver them up if, in its discretion, it considers that it is proper to do so.

2. Where a Contracting Party refuses extradition pursuant to paragraph 1 of this Article, it may submit the case to its competent authority in order that proceedings for the prosecution of the person in respect of all or any of the offences for which extradition has been sought may be taken if that is considered appropriate. That Party shall inform the Requesting Party of any action taken and the outcome of any prosecution.

Nationality shall be determined at the time of the commission of the offence for which extradition is requested.

Article 7

Channel of Communication

Requests for extradition and any subsequent correspondence shall be communicated through the diplomatic channel.

Article 8

Extradition Procedure and Required Documents

1. The request for extradition shall be made in writing. All documents submitted in support of a request for extradition shall be authenticated in accordance with

2. The request for extradition shall be accompanied by:

- (a) documents which describe the identity and, if possible, the nationality and location of the person sought;
- (b) a statement of the laws describing the essential elements and the designation of the offence;
- (c) a statement of the laws describing the penalty to be imposed for the offence; and
- (d) a statement of the laws relating to the time limit on the prosecution or the execution of penalty for the offence.

3. When the request for extradition relates to a person who has not yet been found guilty, it shall be accompanied by:

- (a) a copy of the warrant of arrest issued by a judge or other competent officer of the Requesting Party;
- (b) information establishing that the person sought is the person to whom the warrant of arrest refers; and
- (c) a statement by the competent authority of the conduct alleged to constitute the offence such as would provide

reasonable grounds to suspect that the person sought has committed the offence for which extradition is requested.

4. When the request for extradition relates to a person found guilty, it shall be accompanied by:

- (a) a copy of the relevant judgment rendered by a court of the Requesting Party;
- (b) information establishing that the person sought is the person found guilty; and
- (c) a statement of the conduct constituting the offence for which the person was found guilty.

5. All the documents to be presented by the Requesting Party pursuant to the provisions of this Treaty shall be accompanied by a translation in the English language.

Article 9

Additional Information

1. If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted, that Party may request that additional information be furnished within such time as it specifies.

2. If the person whose extradition is sought is under arrest and the additional information furnished is not sufficient in accordance with this Treaty or is not received within the time specified, the person may be released from custody. Such release shall not preclude the Requesting Party from making another request for the extradition of the person.

3. Where the person is released from custody in accordance with paragraph 2, the Requested Party shall notify the Requesting Party as soon as practicable.

Article 10

Authentication of Supporting Documents

1. A document that, in accordance with Article 8, accompanies a request for extradition shall be admitted in evidence, if authenticated, in any extradition proceedings in the territory of the Requested Party.

2. A document is authenticated for the purposes of this Treaty, if it purports to be signed or sealed or certified by a competent officer of the Requesting Party.

Article 11

Provisional Arrest

1. In case of urgency, either Contracting Party may request the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel. The application may be transmitted by post or telegraph or by any other means affording a record in writing.

2. The application shall contain a description of the person sought, a statement that extradition is to be requested through the diplomatic channel, a statement of the existence of the relevant documents mentioned in paragraph 3 or paragraph 4 of Article 8 authorizing the apprehension of the person, a statement of the penalty that can be imposed or has been imposed for the offence and, if requested by the Requested Party, a concise statement of the conduct alleged to constitute the offence.

3. On receipt of such application, the Requested Party shall take the necessary steps to secure the arrest of the person claimed and the Requesting Party shall be promptly notified of the result of its request.

4. The person arrested shall be set at liberty if the Requesting Party fails to present the request for extradition, accompanied by the documents specified in Article 8, within forty-five (45) days from the date of arrest, provided that this shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

Article 12

Simplified Extradition

When a person sought advises a court or other competent authorities of the Requested Party that the person consents in writing to extradition, the Requested Party shall take all necessary measures to expedite the extradition to the extent permitted under its laws.

Article 13

Conflicting Requests

1. Where requests are received from two or more States for the extradition of the same person, either for the same offence or for different offences, the Requested Party shall determine to which of those States the person is to be extradited and shall notify those States of its decision.

2. In determining to which State a person is to be extradited, the Requested Party shall have regard to all the relevant circumstances and, in particular, to:

- (a) the relative seriousness of those 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 sought; and
- (e) the habitual place of residence of the person.

Article 14

Surrender

1. The Requested Party shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting Party through the diplomatic channel. Reasons shall be given for any complete or partial refusal of a request for extradition.

2. The Requested Party shall agree on the time and place of surrender of the person sought to the appropriate authorities of the Requesting Party in the territory of the Requested Party.

3. The Requesting Party shall remove the person from the territory of the Requested Party within such reasonable period as the Requested Party specifies and, if the person is not removed within that period, the Requested Party may set that person at liberty and may refuse extradition 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 Contracting Party. The two Contracting Parties shall mutually decide upon a new date of surrender or removal, and the provisions of paragraph 3 of this Article shall apply.

5. Where extradition is granted under this Treaty, the Requesting Party shall ensure that the person extradited is brought to trial expeditiously.

Article 15

Surrender of Property

1. To the extent permitted under the laws of the Requested Party and subject to the rights of third parties, which shall be duly respected, all property found in the territory of the Requested Party that has been acquired as a result of the offence or may be required as evidence shall, if the Requesting Party so requests, be surrendered if extradition is granted.

2. Subject to paragraph 1 of this Article, the above-mentioned property shall, if the Requesting Party so requests, be surrendered to the Requesting Party even if the extradition cannot be carried out owing to the death or escape of the person sought.

3. Where the laws of the Requested Party or the rights of third parties so require, any property so surrendered

shall be returned to the Requested Party free of charge if that Party so requests.

Article 16

Rule of Speciality

1. A person who has been extradited under this Treaty shall not be detained, prosecuted or tried for any offence committed before extradition other than that for which extradition has been granted, nor extradited to a third State for any offence, except in any of the following circumstances:

(a) when that person has left the territory of the Requesting Party after extradition and has voluntarily returned to it;

(b) when that person has not left the territory of the Requesting Party within forty-five(45) days after being free to do so; or

(c) when the Requested Party consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 8 and a record of any statement made by the extradited person in respect of the offence concerned. Consent may be given when the offence for which it is requested is extraditable in accordance with the provisions of this Treaty.

2. Paragraph 1 of this Article shall not apply to offences committed after the extradition.

3. When the description of the offence charged is altered in the course of proceedings, the extradited person shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which is:

(a) based on substantially the same facts contained in the extradition request and its supporting documents; and

(b) punishable by the same maximum penalty as, or a lesser maximum penalty than, the offence for which that person was extradited.

Article 17

Transit

1. To the extent permitted by its law, the right to transport through the territory of either Contracting Party a person surrendered to the other Contracting Party by a third State shall be granted on request in writing made through the diplomatic channel.

2. The request may be refused if reasons of public order are opposed to the transit.

3. Permission for the transit of a person surrendered shall include authorization for accompanying officials to hold that person in custody or request and obtain assistance from authorities in the Contracting Party of transit in maintaining custody.

4. Where a person is being held in custody pursuant to paragraph 3 of this Article, the Contracting Party in whose territory the person is being held may direct that the person be released if transportation is not continued within a reasonable time.

5. Authorization for transit shall not be required when air transport is to be used and no landing is scheduled in the territory of the Contracting Party of transit. If an unscheduled landing occurs in the territory of that Party, it may require the other Contracting Party to furnish a request for transit as provided in paragraph 1 of this Article. The Contracting Party of transit shall detain the person to be transported until the transportation is continued provided that the request is received within ninety-six (96) hours of the unscheduled landing.

Article 18

Expenses

1. The Requested Party shall make all necessary arrangements for and meet the cost of any proceedings arising

out of a request for extradition and shall otherwise represent the interests of the Requesting Party.

2. The Requested Party shall bear the expenses incurred in its territory in the arrest of the person whose extradition is sought, and in the maintenance of the person in custody until surrender to a person nominated by the Requesting Party.

3. The Requesting Party shall bear the expenses incurred in removing the person extradited from the territory of the Requested Party.

Article 19

Settlement of Disputes

Any dispute between the Contracting Parties arising out of the interpretation or implementation of this Treaty shall be settled by consultations or negotiations.

Article 20

Entry into Force 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 fulfilled.

2. This Treaty shall also apply to any offence specified in Article 2 committed before this Treaty enters into force.

3. Either Contracting Party may terminate this Treaty at any time by giving six (6) months' written notice to the other Contracting Party.

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

DONE in duplicate at Seoul this 25th day of May 1993 in the Korean and English languages, both texts being equally authentic.

FOR THE REPUBLIC OF KOREA
FOR THE REPUBLIC OF THE PHILIPPINES

/Sgd./ /Sgd./

Han Sung-joo Romulo

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