

March 07, 1988

REPUBLIC OF THE PHILIPPINES AND AUSTRALIA

WHEREAS Australia and the Republic of the Philippines desire to conclude a Treaty on Extradition:

NOW THEREFORE THESE PRESENTS CERTIFY that Senator the Honourable MICHAEL TATE, Minister of State for Justice, has been duly named, constituted and appointed by the Government of Australia as its plenipotentiary and representative having full power and authority to sign the Treaty for and on behalf of Australia.

IN WITNESS WHEREOF, I, MICHAEL DUFFY, Minister of State for Trade Negotiations for and on behalf of the Minister of State for Foreign Affairs and Trade of Australia, have hereunto set my hand and affixed the seal of the Minister of State for Foreign Affairs and Trade.

Done at Canberra this 18th day of February, One thousand nine hundred and eighty-eight

Sgd. **MICHAEL DUFFY**
Minister of State for Trade Negotiations
for and on behalf of the
Minister of State of Foreign Affairs and Trade of Australia.

TREATY ON EXTRADITION BETWEEN **THE REPUBLIC OF THE PHILIPPINES AND AUSTRALIA**

The Republic of the Philippines and Australia

DESIRING to make more effective the co-operation of the two countries in the suppression of crime by concluding a treaty on extradition,

HAVE AGREED as follows:

ARTICLE I

OBLIGATION TO EXTRADITE

Each Contracting State agrees to extradite to the other, in accordance with the provisions of this Treaty, persons who are wanted for prosecution or the imposition or enforcement of a sentence in the Requesting State for an extraditable offense.

ARTICLE 2

EXTRADITABLE OFFENSES

1. For the purposes of this Treaty, extraditable offenses are offenses which are punishable under the laws of both Contracting States by imprisonment for a period of at least one (1) year, or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offense who is wanted for the enforcement of a sentence of imprisonment, extradition shall be granted only if a period of at least six (6) months imprisonment remains to be served.

2. For the purpose of this Article:

(a) an offense shall be an extraditable offense whether or not the laws of the Contracting States place the offense within the same category or denominate the offense

(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 offense.

3. Where the offense has been committed outside the territory of the Requesting State, extradition shall be granted where the laws of the Requested State provide for the punishment of an offense committed outside its territory in similar circumstances. Where the laws of the Requested State do not so provide, the Requested State may, in its discretion, refuse extradition.

4. Extradition may be granted pursuant to the provisions of this Treaty irrespective of when the offense in relation to which extradition is requested was committed, provided that:

(a) it was an offense in the Requesting State at the time of the acts or omissions constituting the offense; and

(b) the acts or omissions alleged would, if they had taken place in the territory of the Requested State at the time of the making of the request for extradition, have constituted an offense against the laws in force in that state.

ARTICLE 3

TERRITORIAL APPLICATION

A reference in this Treaty to the territory of a Contracting State is a reference to all the territory of that Contracting State.

ARTICLE 4

EXCEPTIONS TO EXTRADITION

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

a) if the offense for which extradition is requested is regarded by the Requested State as a political offense. If any question arises as to whether a case is a political offense, the decision of the Requested State shall be final. The taking or attempted taking of the life of any Head of State or Head of Government or a member of his or her family or an offense against the law relating to genocide shall be deemed not to be a political offense;

b) if there are substantial grounds for believing that a request for extradition for an ordinary criminal offense has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality or political belief or that that person's position may be prejudiced for any of those reasons;

c) if the offense for which extradition is requested constitutes an offense against military law or regulations which is not an offense under ordinary criminal law;

d) if final judgement has been passed in the Requested State or in a third state in respect of the offense for which the person's extradition is requested;

e) 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; or

f) if the person, has been, or on being extradited to the Requesting State would be liable to be, tried or sentenced in that State, by a court or tribunal that has been specially established directly or indirectly for the purpose of trying the person's case.

2. Extradition may be refused in any of the following circumstances:

a) if the person whose extradition is requested is a national of the Requested State. Where the Requested State refuses to extradite a national of that State it shall, if the other State so requests and the laws of the Requested State allow, submit the case to the competent authorities in order that proceedings for the prosecution of the person in respect of all or any of the offenses for which extradition has been requested may be taken if that is considered appropriate. Nationality shall be determined at the time of the commission of the offense for which extradition is requested;

b) if the courts of the Requested State are competent, and the Requested State will prosecute the person for the offense for which extradition is requested;

c) if the offense for which the extradition is requested or any other offense for which the person may be detained or tried in accordance with this Treaty, is punishable by death under the laws of the Requesting State, unless that State undertakes that the death penalty will not be carried out;

d) if the offense for which extradition is requested is an offense which carries a punishment of the kind referred to in Article 7 of the International Covenant on civil and Political Rights; or

e) if the Requested State, while also taking into account the nature of the offense and the interests of the Requesting State, considers that, in the circumstances of the case, including the age, health or other personal circumstances of the person whose extradition is requested, the extradition of that person would be unjust, oppressive, incompatible with humanitarian considerations or too severe a punishment.

3. This Article shall not affect any obligations which have been or shall in the future be assumed by the Contracting States under any multilateral Convention.

ARTICLE 5

POSTPONEMENT OF EXTRADITION

The Requested State may postpone the surrender of a person in order to proceed against that person, or so that person may serve a sentence, for an offense other than an offense constituted by an act or omission for which extradition is requested. In such case the Requested State shall advise the Requesting State accordingly.

ARTICLE 6

EXTRADITION PROCEDURE AND REQUIRED DOCUMENTS

1. A request for extradition shall be made in writing and shall be communicated through the diplomatic channel. All documents submitted in support of a request for extradition shall be duly authenticated in accordance with Article 7.

2. The request for extradition shall be accompanied:

(a) if the person is accused of an offense - by a warrant for the arrest or a copy of the warrant for the arrest of the person, or where appropriate, a copy of the relevant charge, a statement of each offense for which extradition is requested and a statement of the acts or omissions which are alleged against the person in respect of each offense;

(b) if the person has been convicted in that person's absence of an offense - by a judicial or other document, or a copy thereof, authorising the apprehension of the person, a statement of each offense for which extradition is requested and a statement of the acts or omissions which are alleged against the person in respect of each offense;

(c) if the person has been convicted of an offense otherwise than in that person's absence - by documents evidencing the conviction and the sentence imposed, the fact that the sentence is immediately enforceable, and the extent to which the sentence has not been carried out;

(d) if the person has been convicted of an offense otherwise than in that person's absence but no sentence has been imposed - by documents evidencing the conviction and a statement affirming that it is intended to impose a sentence;

(e) in all cases - by a statement of the relevant law creating the offense, including any provision relating to the limitation of proceedings and a statement of the penalty that can be imposed for the offense; and

(f) in all cases - by a description as accurate as possible of the person sought together with any other information which may help to establish the person's identity, nationality and whereabouts.

3. To the extent permitted by the laws of the Requested State, extradition may be granted of a person pursuant to the provisions of this Treaty notwithstanding that the requirements of paragraph 1 and paragraph 2 of this Article have not been complied with, provided that the person sought consents to an order for extradition being made.