EXTRADITION AND LEGAL ASSISTANCE: THE PHILIPPINE EXPERIENCE

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I. INTRODUCTION

Before embarking on a discussion of substantive extradition law issues and procedures in the Philippines, I would like to describe briefly the International Affairs Division (IAD) of the Philippine Department of Justice. The Division is composed of State Prosecutors and State Counsels. The Division is responsible for international extradition submitted by local authorities and is the principal office handling all requests for extradition of individuals who have fled to the Philippines. The IAD is also the central office in charge of all matters relating to mutual legal assistance in criminal matters. In addition, within the IAD we have the Refugee Processing Unit (RPU) which implements our obligations pursuant to the 1951 Refugee Convention and its 1967 Protocol. A fourth function of IAD is to assist in handling requests for transfer of sentenced persons/prisoners, although at the moment the Philippines has only two treaties - one with Hong Kong and another with Thailand - but neither have been ratified to date. Finally, the IAD also participates in treaty negotiations.

At present the Philippines has extradition treaties with Australia, Canada, the Federated States of Micronesia, Hong Kong, Indonesia, Republic of Korea, Switzerland, the United States of America, and the Kingdom of Thailand, and treaties on mutual legal assistance on criminal matters with Australia and the United States of America.

As already mentioned, the Philippines has two treaties on Transfer of Sentenced Persons, one with Hong Kong and another Thailand, but both are still pending in the Senate.

The IAD is not a big office. All in all there are about fifteen (15) of us. We are directly under an Undersecretary of Justice. So far this small group is sufficient considering the low number of cases being handled.

The year 1999 was a challenging year for the IAD. The year saw most of the lawyers of the IAD battling cases from the Regional Trial Court, Court of Appeals and the Supreme Court. Foremost among these cases was the United States appeal for the extradition of Mark Jimenez, a presidential adviser. This case put extradition in the limelight and awareness to its importance was focused as it saw publicity in the headlines.

With this brief introduction about the IAD, I would now like to begin a discussion about the extradition experience in the Philippines. I will not discuss the legal principles applicable to extradition, except maybe in passing, since numerous materials abound in this area. Instead, my discussion will be limited to sharing our practical experiences in extradition and cooperation and some of the problems facing us. My discussion will be divided into two, namely, our experience in those cases where we have treaties, which I

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would label as "formal extradition procedures", and those where we do not have any formal treaties, which I call, "informal cooperation".

II. FORMAL EXTRADITION PROCEDURES

A. The Philippine Extradition Law

In the Philippines extradition is governed by Presidential Decree No. 1069, "The Philippine Extradition Law", and by the applicable extradition treaty in force. PD No. 1069 was enacted by then President Ferdinand Marcos in 1977, shortly after the Philippines concluded its first extradition treaty with the Republic of Indonesia. As can be seen the law is more than twenty (20) years old, and has not been amended since. PD No. 1069 is intended to "guide the executive department and the courts in the proper implementation of the extradition treaties to which the Philippines is a signatory". Under the law extradition is defined as :

> "The removal of an accused from the Philippines with the object of placing him at the disposal of foreign authorities to enable the requesting state or government to hold him in connection with any criminal investigation directed against him or the execution of a penalty imposed on him under the penal or criminal law of the requesting state or government."
>
> The definition approximates the international definition of extradition which is:
> ... the process by which persons charged with or convicted of crime against the law of a State and found in a foreign State are returned by the latter to the former for trial or punishment. It applies to those who are merely charged with an offense but have not been brought to trial; to those who have been tried and convicted and have subsequently escaped from custody; and to those who have been convicted in absentia."

Philippine law provides that the Secretary of Foreign Affairs has the first opportunity to make a determination on whether the request complies with the requirements of the law and the relevant treaty, such as the submission of the original or authenticated copy of the decision or sentence imposed upon an accused; or the criminal charge and the warrant of arrest; a recital of the acts for which extradition is requested containing the name and identity of the accused; his whereabouts in the Philippines; the acts or omissions complained of; the time and place of the commission of those acts; the text of the applicable law or a statement of the contents; and such other documents or information in support thereof. Once all of these are complied with, the request and supporting documents are forwarded to the Secretary of Justice who shall then designate a panel of attorneys from the IAD to handle the case.

In practice, the role of the Department of Justice (DOJ) is not limited to filing and handling the case in court. If it deems necessary, the DOJ may also request the foreign state to submit additional supporting documents particular to Philippine procedures. This is done to make sure that only those requests that comply with both treaty and domestic requirements are processed. For example, we usually request for certified copies of the affidavit of witnesses and do not merely rely on the affidavit of the prosecuting attorney which merely synthesizes the statements of the witnesses. Relying solely on the affidavit of the prosecuting attorney may be dangerous because it would be considered already a double hearsay under

Philippine laws.

Once all the supporting documents are in order, the State Counsel will prepare the extradition petition which is then filed with a Regional Trial Court. The judge may then issue a warrant of arrest if in the court's opinion the immediate arrest and temporary detention of the accused will best serve the ends of justice. It has been the practice of the IAD to request for the arrest of an accused upon the filing of an extradition petition/application.

Under Section 20, provisional arrest can be granted but the period of detention is only twenty (20) days. The law also contains a provision for the appointment of a *counsel de oficio* if on the date set for the hearing the accused does not have a legal counsel.

In addition to PD No. 1069, the Philippine Rules of Court, although not a law, apply in extradition cases but only insofar as practicable and when not inconsistent with the summary nature of the proceedings.

On the issue of the degree of evidence required, under PD No. 1069, what the petitioner must establish is a *prima facie* case. The standard generally used in treaties is probable cause. An issue arises on which standard is higher. Under Philippine jurisdiction there is some distinction between the two but it is a thin line that is often blurred. It would appear however, that probable cause is a higher standard.

Decisions of the Regional Trial Courts are appealable to the Court of Appeals, and may also be raised by certiorari to the Supreme Court.

B. Crimes Covered by Treaty

For crimes covered by treaty, the Philippines adopts both the listing approach - where specific crimes are enumerated, and the dual criminality, or what I would call the conduct approach, where what is important is the underlying conduct of an accused.

To satisfy dual criminality, the name by which the crime is described in the two countries need not be the same, nor should the scope of liability for the crimes be similar. As to the period when dual criminality must exist, it may be worth noting that in the recent case of *Regina vs. Bartle and the Commissioner of Police*, more commonly known as the Pinochet extradition appeal case, the House of Lords opined that dual criminality must exist at the time of the commission of the act and not at the time of the request.

The listing approach is adopted in the extradition treaties with Hong Kong, Indonesia, and Thailand. While those treaties with Australia, Canada, the Republic of Korea, Micronesia, Switzerland, and the United States of America adopt the dual criminality approach.

C. Jurisprudence on Extradition

To my mind, there is only one (1) case decided by the Philippine Supreme Court regarding extradition. This is the case of *Wright vs. Court of Appeals*. This case involved the extradition of an Australian, Mr. Paul Wright, back to Australia to face charges of obtaining property by deception. The case is significant because our Supreme Court, in upholding the conclusion of the Honorable Court of Appeals, held that the RP-Australia Extradition Treaty is neither a piece of criminal legislation nor a criminal procedure. The Honorable Supreme Court stated that extradition "merely provides for

the extradition of persons wanted for prosecution of an offense or a crime ..." The decision states in categorical terms that extradition is not a criminal procedure in the Philippines. Consequently, all the strict safeguard measures attendant in a criminal case are not readily applicable in extradition.

It is accurate to state that extradition is not a criminal procedure. The purpose of an extradition hearing is not to determine the guilt of the accused - that is the role of the court where the primary case is pending - but merely to determine whether there is probable cause to believe that the accused committed the offenses charged in the requesting country. As such, the extradition court is not the venue to raise defenses against the offense/s charged.

The case also made it clear that the provisions of an extradition treaty which make it applicable to offenses committed prior to its entry into force are not in the nature of an *ex post facto* law.

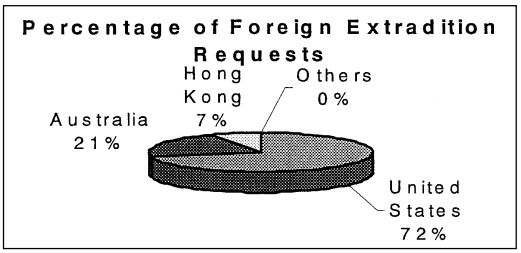
Finally, the decision holds that the phrase "wanted for prosecution" which is used in the treaties does not mean that there is a criminal case pending against the accused in the requesting State. This requirement is complied with as long as there is a warrant for the arrest of the accused. In that instance the person can be said to be "wanted for prosecution". Holding otherwise, it would be very easy for an accused to render an extradition treaty ineffective by the mere fact of absconding before a case is actually filed.

D. Breakdown of Extradition Requests

The breakdown of the extradition requests is as follows:

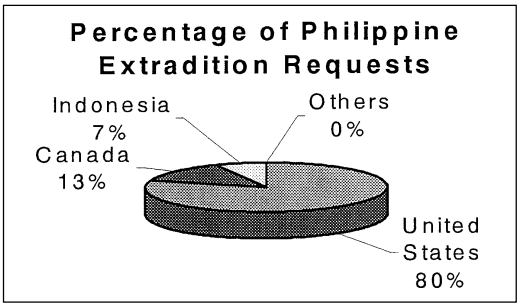
- Requesting State: USA, 10 (4 detained, 1 extradited)
- Requesting State: Australia 3 (3 extradited)
- Requesting State: Hong Kong 1 (detained)

CHART 1



- Requested State: USA, 12
- Requested State: Canada, 2
- Requested State; Indonesia, 1

CHART 2



The data show that the Philippines receives most requests from the United States. Correspondingly, the Philippines sends most of its requests to the United States. This may be due in part to the large number of Filipinos who reside in the United States. It can also be seen that out of a total of 14 foreign requests, the Philippines already extradited the subjects in four (4) of these cases. That would translate to 29% extradition rate. All the other cases are still pending.

For requests made pursuant to treaties on mutual legal assistance, the breakdown is as follows :

- Requesting State: USA, 4
- Requesting State: Australia 2

E. Current Major Issues Encountered

Generally, most of the objections raised against extradition are constitutional ones. This is understandable considering the infancy of the proceedings in the Philippines. Grounds for arguing that extradition/extradition treaties are unconstitutional are the following:

1. It violates human rights
2. It is ex post facto
3. It is a denial of due process
4. It does not supersede domestic law and that it in effect allows extraterritorial application of foreign laws.

In ordinary cases these issues could easily be resolved. However, as this is connected with a novel matter, there is some difficulty in resolving the constitutional issues because of the dearth of jurisprudence on the subject. Additionally, extradition and mutual legal assistance are topics that are generally new to both bench and bar. We therefore, often rely on US jurisprudence, which have been of great assistance to us. Hopefully, we will soon have our own jurisprudence on the matter.

Some of the specific issues we encountered are the following:

a. Provisional Arrest

When an alleged fugitive has been located in a foreign country it is often important to effect his arrest at once to prevent his further flight. For this purpose, most extradition laws and treaties provide that the alleged fugitive may be arrested and temporarily detained for a period of time to enable the requesting State to furnish the necessary documentation in support of its request for his extradition. It is therefore, standard for extradition treaties to contain a provision on provisional arrest. Considering the time factor, our implementing law, PD No. 1069 allows a request for provisional arrest to be sent either through diplomatic channels or by post or telegraph. Through practice this has evolved to include requests sent through fax. This is not without problems. In a couple of cases, the accused has questioned the validity of requests that are sent through fax arguing that there is no guarantee that fax copies are certified copies of the original. Basically, the argument hinges on the issue of authentication and certification. It is the position of the IAD that if the law allows telegraph, which are often brief statements then with more reason should fax copies, which are reproductions of the original, be allowed.

Also under PD No. 1069, the period for detention under a provisional arrest pending the receipt of the extradition request is twenty (20) days. The treaties however, provide generally from 45 to 60 days detention. There is a case now pending before our Supreme Court on the issue of whether later treaties are deemed to have amended the period so provided under the domestic statute. It is the position of the IAD that, where there is a conflict, a later treaty prevails over an earlier enacted statute. This is so because under Philippine jurisprudence, a treaty once ratified is on equal footing with a domestic law.

b. Issue of Bail

An issue that arises once an accused has been provisionally arrested is the question of bail. Individual's interest in pre-hearing liberty has been recognized under the principle of due process and consequently, have been denied only in limited circumstances. Moreover, in the Philippines, the right to bail is enshrined in our constitution.

It has been commented that in extradition cases, the individual interest in pre-hearing liberty is arguably even stronger than in domestic cases, because in addition to the imprisonment, there is also present the transportation of the individual to another jurisdiction. Despite this interest, most extradition treaties are silent on the provision of bail. In the Harvard Research in International Law, Draft Convention on Extradition, the issue of the right to bail was deliberately left out. At that time it seemed best to "leave to the municipal law of each State to determine whether enlargement upon bail is a safe means of detention under any circumstances, and, if so, the circumstances which shall justify such action."

In the cases pending now in various courts in the Philippines, the IAD puts forward the argument that the Constitutional Right to Bail is not an absolute right. This argument hinges on the principle that as a general rule the constitutional right to bail is available only in criminal proceedings committed against the state. This is supported by the text of Section 13, Article Ⅲ, of the 1987 Constitution which states that:

> All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of Habeas Corpus is suspended. Excessive bail shall not be required. (underscoring supplied)

Since, extradition is not a criminal proceeding, bail as a matter of right does not exist, if at best, it may exist only as a matter of discretion. Or to put in differently, in extradition proceedings, there is a presumption against bail.

The absence of a right to bail does not mean that the accused would be left unprotected. It has been noted that in those situations where the right to bail does not exist, emphasis has been given to the right to speedy trial. It would appear that this counterbalancing of rights would reduce whatever harshness may exist by the absence of a right to bail. It is notable that both in the Philippine Extradition Law and the extradition treaties entered into by the Philippines there are no provisions on bail. What the Philippine Extradition Law provides is that the extradition proceedings are summary in nature.

However, as lawyers, we always have an alternative argument. Assuming that the courts have the authority to grant bail in extradition proceedings even in the absence of specific provision in PD 1069 and the RP-US Extradition Treaty, this power must be exercised only for the most special of circumstances. In Philippine jurisprudence there are examples of special circumstances; that is: to prolong detention under a protracted trial with no indication of early termination; or health reasons necessitating special hospitalization.

We are also arguing that if bail exists as a matter of discretion, the showing of a reasonable risk of flight is sufficient ground for denying bail. In the Philippine setting, this argument is novel since the practice is that the risk of flight is not a ground for denial, the remedy being to merely increase the amount of bail. The reason for the presumption against bail in extradition proceedings is one that carries international repercussions for the requested state. As enunciated in the case of Wright vs. Henkel:

> the demanding government, when it has done all that the treaty and the

> law require it to do, is entitled to the delivery of the accused on the issue of the proper warrant, and the other government is under obligation to make the surrender; an obligation which it might deem impossible to fulfill if release on bail were permitted. The enforcement of the bond, if forfeited, would hardly meet the international demand; and the regaining of the custody of the accused obviously would be surrounded with serious embarrassment.

Unlike in ordinary domestic cases wherein the damage caused by an accused who absconds is contained within the domestic plane, in extradition, releasing an extraditee on bail, which provides an opportunity to abscond, puts at risk the interest of the government to comply with international obligations. This is a very real danger. We have a case wherein a foreigner out on bail had fled to the Philippines.

There is still no definitive Philippine jurisprudence on this issue as all the cases regarding bail in extradition are pending in different courts.

c. Politically Motivated

I understand that in the United States the determination of whether a crime is of a political nature rests with the courts, while the question of the political motivation of the country requesting extradition is to be made by the executive branch. In the Philippines there is still no clear jurisprudence on this matter although there is a case pending in court which may indirectly address this issue. In that case the person sought to be extradited requested the IAD for copies of the request and supporting documents. The IAD refused him access on the ground that it was still processing the request and that at that stage there is still no right of access, and at any rate he will be furnished all the documents once the petition for extradition is filed in court. The stand of the subject person was that he had a right of access to the documents at anytime in order that he would be able to show before the executive authorities that the request was politically motivated. The issue therefore, appears to be whether the government is duty bound to notify a person at the soonest possible time, even prior to filing a petition in court, that his extradition is sought. One danger we see in this is that this would give such person an opportunity to flee since the executive authorities at this stage do not yet have access to any judicial safeguards that would prevent flight.

I noticed that the tenor of the provisions on politically motivated requests/political offenses are similar to that which is used in International Refugee Law, particularly the 1951 Convention Relating to the Status of Refugees, and the 1967 Protocol relating to the Status of Refugees, to which the Philippines acceded to in July 22, 1981. Consequently, the issue of political motivated requests should be understood in the context that it is used in International Refugee law, as referring to an ordinary criminal offence applied in politically suspicious circumstances .

d. Extradition of Nationals

Philippine law allows the extradition of its nationals subject to the usual exceptions as contained in the relevant treaties. Out of the four cases wherein extradition was granted, one of them was a Filipino.

F. MLAT

Unlike in extradition, mutual legal assistance in the Philippines does not have any implementing laws for the treaties. Through practice we have considered both treaties to be self-executory and therefore, even in the absence of any local law, these treaties have been enforced. MLAT are

used in order to aid government prosecutors in gathering evidence located overseas even at the investigatory stage. In a way this would substitute for letters rogatory.

At present, most requests for legal assistance involve having to examine bank records. Legally, this is a problem because the Philippines has a strict bank secrecy law. This is particularly true of foreign currency deposits. It may be argued that the treaties supersede the bank secrecy deposit law as the treaties came at a much later time. However, in the treaties there is no express repeal made and therefore, counter-arguments are made that there is no repeal or amendment on the bank secrecy law.

We have a theory, following the case of *Salvacion vs. Central Bank of the Philippines*, that the bank secrecy laws do not protect "illegitimate" deposits or fraudulent investments. As the Solicitor General argued:

> It is evident from the above [Whereas clauses] that the Offshore Banking System and the Foreign Currency Deposit System were designed to draw deposits from foreign *lenders* and *investors* (Vide second Whereas of PD No. 1034; third Whereas of PD No. 1035). It is these deposits that are induced by the two laws and given protection and incentives by them.
>
> Obviously, the foreign currency deposit made by a transient or a tourist is not the kind of deposit encouraged by PD Nos. 1034 and 1035 and given incentives and protection by said laws because such depositor stays only for a few days in the country and, therefore, will maintain his deposit in the bank only for a short time.

The reason for the protection was to increase our links with foreign lenders and to facilitate the flow of desired investments into the Philippines. Therefore, if the funds or the accounts can be identified by an outside source as not being used for legitimate purposes, then the bank secrecy laws do not apply.

At any rate, once a request for legal assistance is received, the IAD files an application in court with a prayer to examine the documents requested, and to freeze the target accounts. We have been fortunate that the banks we sought to gather evidence and freeze accounts from were cooperative, and immediately complied with the court orders. To date, we have recovered approximately thirteen million pesos (P 13,000,000.00) from laundered drug money. Probably, it will be easier to target laundered drug money as we could then use the 1988 Convention of Psychotropic Substances also as a legal basis as it has provisions on mutual legal assistance and on extradition.

We are cautious in the implementation of MLATs as we are walking a tight rope because of the absence of any definitive jurisprudence. Slowly, however, we are gathering materials and formulating possible arguments against the bank secrecy laws.

Regrettably however, and maybe due to lack of adequate information and resources, the Philippines has not taken advantage of the MLATs. As the data shows, the requests have been one sided, with the Philippines being the requested State.

III. INFORMAL PROCEDURES: COOPERATION WITH JAPAN

As mentioned earlier, we have had a number of requests from Japan for assistance in gathering testimonial evidence, and sometimes object evidence as well. We have also in a number of instances deported Japanese nationals who fled to the Philippines in the hope of avoiding prosecution in Japan.

There are no hard and fast rules governing our cooperation with Japan. While the requests are normally coursed through the appropriate diplomatic channels, it is not unusual for an advance copy to be sent directly to my office so that by the time we receive the official request, the documents requested or person sought is already available or in custody.

To better illustrate the workings of this "informal procedure" I would like to narrate a few actual examples.

ACTUAL CASES A.

On January 18, 1993, defendants Kosumi Yoshimi and Pablito Franco Barlis conspired with William Gallardo Bueno and Joemarie Baldemero Chua, and with murderous intent, knocked down Kosumi Shozaburo, defendant Kosumi Yoshimi's father (87 years old) on his back, pushed beddings against his face, tightened an electrical cord around his neck and stabbed Shozaburo in the neck with a sharp blade thereby causing Shozaburo to die from excessive bleeding due to punctured wounds in his neck at the victim's residence at Nagoya-shi, Japan. Furthermore, the defendants sprinkled kerosene from the heater found in the living room over the bedding etc., ignited the kerosene with a lighter one of them was carrying and allowed the fire to spread through a Japanese foot warmer (Kotatsu) to the house, thereby causing the entire house to be burned down.

The applicable provisions of law violated were

a) Article 199, Penal Code of Japan, which states that:
   A person who kills other person (s) shall be liable to death or imprisonment with labor for life or imprisonment with labor for a minimum period of three years

b) Article 108:
   A person who sets fire to and burns an architectural structure used as a residence or inhabited by other person(s) steam train, electric train, ship or more shall be liable to death penalty or imprisonment with labor for life or imprisonment with forced labor for a minimum period of five years.

c) Article 60:
   Two or more persons who act jointly in the commission of a crime are all principals.

In February 1994, the Japanese Police requested the Philippine National Police through the International Criminal Police Organization (ICPO) to interrogate Joemarie Baldemero Chua an accomplice who had fled to the Philippines. During the course of the trial proceedings, accomplice William Gallardo Bueno's testimony at Nagoya District Court conflicted with Joemarie's statement taken by an investigator of the Criminal Investigation Unit of the Philippine National Police on the following crucial matters :

1. The time when the conspiracy to commit murder and arson was formed;
2. The details of the conspiracy;

3. The person(s) among the three Filipino accomplices including Joemarie, who actually murdered Shozaburo by winding and tightening an electrical cord around his neck and stabbing Shozaburo in the neck with a sharp blade.
4. The person who sprinkled kerosene from a heater set fire to the house and so on.

Due to the above-mentioned discrepancies, it was difficult to determine whose statement was true. Therefore, it became necessary to request a Public Prosecutor in the Philippines to interrogate Joemarie again, in the presence of a Japanese Public Prosecutor, about the particulars and circumstances of the conspiracy to commit murder and arson including the roles of the three Filipino accomplices, the reward and the details of the actual execution of above-mentioned crimes.

On February 5, 1996, Mr. Hirosi Shimizu Chief Prosecutor of the Nagoya District Public Prosecutors Office of Japan wrote a letter to the judicial authorities of the Republic of the Philippines requesting for assistance in criminal investigation for the criminal cases of Murder and Arson to Inhabited Structure against Mr. Kosumi Yoshimi and Pablito Franco Barlis, which were all under trial procedure at Nagoya District Court.

A note verbale, no. 88-96, was issued by the Embassy of Japan in Manila to the Department of Foreign Affairs requesting the cooperation of the authorities of the Philippine Government in the said investigation. Philippine Department of Foreign Affairs endorsed all documents to the Department of Justice. On March 25, 1996, then Secretary of Justice Teofisto T. Guingona Jr., issued a Department Order designating this representation to assist the Japanese Public Prosecutor in Iloilo City on March 26 to 28, 1996 in interviewing one Joemarie Baldemero Chua in relation to the said criminal cases.

Immediately, we all proceeded to Iloilo City and I personally conducted clarificatory questioning on the person of Joemarie Baldemero Chua. He was assisted by a lawyer from the Public Attorney's Office. Joemarie Chua voluntarily and freely narrated the incident that happened on January 18, 1993. The Japanese Public Prosecutor and his assistant went back to Japan with the sworn statement of Joemarie Chua.

Kosumi Yoshimi was sentenced to life imprisonment for Murder and Arson to Inhabited Structure at Nagoya District Court on November 11, 1997 and his Koso-appeal was dismissed at Nagoya High Court on November 19, 1998. His Jokoku-appeal is pending at the Supreme Court. Pablito Franco Barlis was sentenced to imprisonment with labour of thirteen years for Murder and Arson to Inhabited Structure at Nagoya District Court on February 26, 1998 which judgment has now become final. William Gallardo Bueno was sentenced to imprisonment with labour of fifteen years for Murder and Arson to Inhabited Structure at Nagoya District Court on May 11, 1995 which judgment has now become final.

ACTUAL CASES B.

On January 12, 1990, the Osaka Maritime Police and the Osaka Customs Police arrested Akira Fujita in Manila who had been wanted for purchasing and shipping handguns from the Philippines in connection with the smuggling of 40 handguns by a Yamaguchi-gumi (Yakuza) syndicate member from the Philippines. Police investigation revealed that Fujita conspired with one Hironori Takenouchi, of lzumi City, a Yakuza member. Fujita

allegedly purchased 40 handguns and 800 rounds of ammunition with one million and several hundred thousand yen he received from Takenouchi and concealed the guns and ammunition inside the furniture he shipped to Japan. Fujita was subsequently convicted and was sentenced to seven years imprisonment on July 19, 1990.

On October 8, 1997, Interpol Tokyo informed Interpol Manila that Akira Fujita departed from Japan on the Pakistan Airlines flight bound for Manila on October 7, 1997. An official of the Japanese Embassy in Manila requested this representation for assistance with the information on the whereabouts of Fujita.

I immediately referred the case of Fujita to the Chief of the Intelligence Division of the Bureau of Immigration, and two days later, or on October 9, 1997, at about 6:30 PM of the same date, Fujita was arrested by Immigration agents. After one week, he was deported back to Japan.

ACTUAL CASES C.

On March 8, 1999, Mr. Norio Ishibe, the Chief Prosecutor of the Akita District Public Prosecutors' Office requested the judicial authorities of the Republic of the Philippines for assistance in a criminal investigation. The facts of the case are as follows:

Defendants Akihito Ishiyama was a postmaster of Tokiwa Post Office in Akita, Japan. He handled and was in charge of handling cash at the Tokiwa Post Office as part of his work responsibilities. At around 6:00 P.M., October 23, 1998, the defendant appropriated cash in the amount of 32,305,500 yen from Tokiwa Post Office for his own use.

> The applicable provisions of law violated :
> Penal Code of Japan
> Article 253
> A person who wrongfully appropriates another property which has come into his possession in the course of business shall be punished with imprisonment with labor for not more than 10 years.
> Article 235
> A person who steals the property of another commits the crime of larceny and shall be punished with imprisonment with labor for not more than 10 years.

Defendant Ishiyama stated before an investigator that he left Japan for the Philippines with cash totaling about 33,000,000 yen and gave 970,000 yen to Lody's sister, Mina, and left 30,000,000 yen with Sunny Laxa, the common-law husband of Mina.

In order to confirm the defendant' s statement and to ascertain how the money he got was spent, one Japanese Public Prosecutor and an assistant were dispatched to conduct interviews of witnesses. This representation was designated by the Chief State Prosecutor of the Philippines to assist them. With this designation, this representation together with the Japanese Public Prosecutor and his assistant found the witnesses in one of the provinces. They voluntarily and freely gave their respective sworn statements.

Akihito Ishiyama was sentenced to imprisonment with labour of four years and six months for embezzlement, larceny and fraud by the Akita District Court on September 1, 1999 which judgment has now become final.

ACTUAL CASES D.

On September 1, 1998, Mr. Hideo Iida, the Chief Public Prosecutor of the Osaka District Public Prosecutors' Office wrote a letter to the Judicial authorities of the Republic of the Philippines requesting for

assistance in criminal cases of Abandonment of Corpse and Violation of the Firearms and Swords Control Law against Chow On Park who intended to abandon the body of one Haruo Nishikawa murdered by Ho Ji Chong alias Hiroshi Matsuda by shooting, and placed the corpse into the trunk of the victim's passenger car parked in the parking lot on the first floor of Dainichi Building at Kadoma-shi, Osaka at around 6:00 PM on November 28, 1997 and drove that car to the parking lot of Hoshigaoka Kosei Nenkin Hospital located at Hirakata-shi, Osaka and left the body there.

The defendant received about 30 million Japanese yen in cash as a reward for the criminal act from the accomplice Ho Ji Chong alias Hiroshi Matsuda on November 28, 1997. The defendant's wife, Marucilla Park Ruby Cristina alias Ruby Arai, entered the Philippines with the said cash on December 6, 1997 upon defendant's order. Said Marucilla asked her cousin Bernardo Marilou y Rivera to keep ¥5,480,000 in the safe-deposit box at Westmont Bank and ¥19,000,000 in a safe-deposit box at China Banking Corporation. Since the defendant got the said money in reward for the criminal act of this case, the money had to be seized and confiscated as evidence.

The applicable provisions of law violated :
Penal Code of Japan
Article 190 and Article 60
Abandonment of Corpse

Article 31-3 paragraph 1 and Article 3 paragraph 1 of the Firearms and Swords Control Law and Article 60 of the Penal Code shall be applied to the offense described above as a violation of the Firearms and Swords Control Law.

Japanese Public Prosecutor Haruhiko Fujimoto and his assistant were dispatched to Manila. This representation was designated by the Chief State Prosecutor to assist them. I was able to persuade Ruby Marcilla Arai to turn over the money kept in the safe deposit box of China Bank Corporation. She personally handed to me ¥24,480,000. I delivered the said amount to the Department of Foreign Affairs (DFA). The DFA turned over the money to the officials of the Japanese Embassy in Manila who turned over the said amount to the Osaka District Public Prosecutors Office.

Chow On Park alias Haruhiko Arai was sentenced to imprisonment with labour to two years for Abandonment of Corpse and violation of the Firearms and Swords Control Law as well as the confiscation of 24,480,000 yen and a hand gun at Osaka District Court on April 30, 1999, and his Koso-appeal was dismissed on November 4, 1999. His Jokoku-appeal is pending at the Supreme Court.

It may be worth noting that the average time it took us to comply with requests for assistance is about one (1) week. The absence of any procedure in these cases helped reduce bureaucratic red tape and thereby, cut down on the time element. Also, it appears that most witnesses were willing to cooperate once it was explained to them that only their testimony would be needed and that they would not be extradited or charged. Furthermore, after explaining to potential witnesses or accessories that only the proceeds of the crimes would be confiscated but no charges will be brought against them, they willingly gave up the proceeds.

It is important therefore, that those involved in legal assistance be able to meet potential witnesses in order to be able to allay their fears. Once this initial fear was

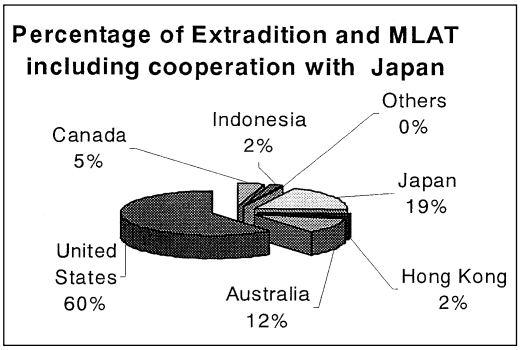
properly addressed, the witnesses became cooperative.

On the aspect of "surrender", the procedure used was basically deportation. The legal justifications for deportation would be their illegal entry, i.e. usually through falsified documents; or that they were previously blacklisted and therefore, even if they were able to enter, they are still legally subject to deportation when found.

Probably, this cooperation setup with the Japanese government works because of the peculiarities of the Japanese legal system whereby affidavits executed overseas are admissible as evidence. But what these cases show is that even outside a formal framework, where two governments are willing to share resources and expertise, and have developed close working relations, real feasible solutions can occur.

It will be noticed that the Philippines does not have any extradition or mutual legal assistance treaty with Japan. This however, has not stopped us from cooperating with Japan in the effort to enforce criminal law. If we factor the number of cases we cooperated with Japan (both for legal assistance, and for deportation) the statistics would be as follows:

CHART 3



IV. CONCLUSION

Extradition and Mutual Legal Assistance in the Philippines is still at the infancy stage. There is little local jurisprudence or writings on the subject. This may be a reason why we still use informal approaches.

We still have a long way to go. Being a developing country we are still way behind. However, this will give us the unique opportunity to develop the law and blaze new trails. Often, we are mere players in a field that has been set by our forebears, but here, as we play we make the rules. Very few are given this opportunity.

We are fortunate that we have seminars such as this one, whereby government officials are exposed to the experiences of different countries. We can benefit from knowing the laws and legal systems that work, and can adopt the same to fit our own country's legal peculiarities as we develop the law. More important, fora such as these help foster lasting friendships among those who will one day be involved in extradition and legal assistance. In my personal experience, my friendship with UNAFEI Director Kitada, has been a positive factor in Philippine-Japanese cooperation. Let us then use these opportunities to work for more effective and lasting solutions to the problems facing us. It is precisely here where we can mutually benefit by sharing our resources, ideas and expertise and thereby contribute to world peace and harmony. And may the product of the work we do here contribute to a better generation in the future with less crime and more prosperity and justice.

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- Whereas Clause of Presidential Decree No. 1034.