

# INTERNATIONAL COOPERATION IN COMBATING TRAFFICKING IN HUMAN BEINGS AND SMUGGLING OF MIGRANTS

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## I. INTRODUCTION

Characterized by shrinking space and time and disappearing borders linking people's lives more deeply and more immediately than ever before, the present era of globalization has brought about mass human migrations. Human migrations are caused either by wars, social and political turmoil or by economic reasons. This event has ushered in the birth of international criminal syndicates engaged in the lucrative trade of human smuggling and trafficking in persons.

Thus, the world has experienced and continues to experience unprecedented flows of illegal migrants. People smuggling and trafficking networks have become a major part of transnational organized crime and more complex in their operations than ever before. They threaten the integrity of States' borders, national security, national sovereignty and the rule of law. As the operations of the syndicates engaging in lucrative trade become more systematic and complex, the need for effective solutions and for international cooperation in dealing with the problem has become extremely urgent.

International cooperation to stem the operations of the syndicates and its effects has become necessary. Unless States cooperate and consolidate their efforts towards solving the problem and develop legal frameworks and implement them, transnational criminal syndicates will continue to engage in this type of activity with impunity.

In this paper, I shall deal mainly with treaty-based and non-treaty based forms of international cooperation in stemming or eradicating the people smuggling and trafficking in persons problem. Focusing mainly on possible cooperation in extradition and legal assistance in criminal matters, as well as informal cooperation procedures which are swift and effective.

## II. CONSTITUTIONAL BASIS OF INTERNATIONAL COOPERATION BY THE PHILIPPINES

Adopting the generally accepted principles of international law as part of the law of the land, the Philippines adheres to the policy of cooperation in its dealings with all nations. This policy is enshrined in the present Philippine Constitution which provides that "The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land, and adheres to the policy of peace, equality, justice, freedom, cooperation and amity with all nations."

Consistent with the policy of international cooperation, the Philippines has become a party to various multilateral treaties. These multilateral treaties include the ones intended to address transnational organized crime and to protect the vulnerable sectors of society, such as women and children. Thus, it signed and ratified the United Nations Convention Against Transnational Organized Crime and its accompanying Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons. Especially Women and Children and the Protocol Against the Smuggling of Migrants by Land, Air and Sea.

The Philippines is also a party to various bilateral treaties aimed at setting the legal framework or mechanism for international cooperation in preventing, suppressing and the punishment of crimes.

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122ND INTERNATIONAL TRAINING COURSE  
VISITING EXPERTS' PAPERS

These legal mechanisms include extradition treaties and treaties on mutual legal assistance in criminal matters.

Extradition treaties seek the surrender of accused and convicted persons to the Requesting State. Treaties on mutual legal assistance in criminal matters, on the other hand, provide a wider scope of assistance that generally encompass the taking of testimony or statements of persons; providing documents, records, and items of evidence; serving documents; locating or identifying persons or items; transferring persons in custody for testimony or for other purposes; executing requests for searches or seizures; assisting in proceedings related to forfeiture of assets, restitution, and collection of fines; and other forms of assistance not prohibited by the laws of the Requested State. The two treaties complement each other.

At present, the Philippines has nine (9) extradition treaties and two mutual legal assistance treaties in criminal matters that are in force and effect. It has an extradition treaty with: Australia; Canada; the Federated States of Micronesia; the Hong Kong Special Administrative Region; Indonesia; the Republic of Korea; Switzerland; the United States of America; and the Kingdom of Thailand. It also has a treaty on mutual legal assistance in criminal matters with Australia and the United States of America.

Of these States, the United States has a substantial number of requests for extradition and legal assistance averaging 70% and the rest are shared by the other Philippine treaty partners. Most of our outgoing requests for extradition and legal assistance are sent to the United States.

Recently, the Philippines has concluded an extradition treaty with the People's Republic of China and a treaty on mutual legal assistance in criminal matters with the People's Republic of China, Hong Kong Special Administrative Region and Switzerland. These treaties are not yet in force pending compliance by the parties with their respective domestic laws for the treaties' effectivity. The requirement for the validity and effectivity of a treaty or international agreement, insofar as the Philippines is concerned, is provided in Section 21, Article VII of the Philippine Constitution which provides: "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".

The conclusion of treaties by the Philippines shows its firm commitment to cooperate with the international community in the suppression of crimes. Specifically, it is intended to place international cooperation on a firm footing by providing predictable rules for cooperation and to make more transparent the possibilities of such cooperation with other States.

Although nine extradition treaties and two mutual legal assistance treaties are in force and effect, no request has yet been made for offenses involving human smuggling and trafficking in persons.

If there is a request for extradition in connection with the offense of human trafficking, the Philippines will have to contend with the issue of the existence of dual criminality, which is a requirement for extraditability. The reason is that the Philippines has no specific law that deals squarely with human trafficking. There is, however, a Bill titled the "Anti-Trafficking in Human Beings Act of 2001" pending in the Philippine Congress that seeks to criminalize human trafficking in all its forms.

Pending the enactment of the bill into law, law enforcement authorities use existing laws to penalize those involved in human trafficking, which laws may be used in determining the presence of double criminality in case there is an extradition request. These laws include: (a) the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act" (Republic Act No. 7610); (b) the "Migrant Workers and Overseas Filipino Act" (RA No. 8042); (c) "An Act to Declare Unlawful the Practice of Matching Filipino Women for Marriage to Foreign Nationals on a Mail-Order Basis and Other Similar Practices Including the Advertisement, Publication, Printing or Distribution of Brochures, flyers and Other Propaganda Materials in Furtherance Thereof and Providing Penalty Therefor" (RA No. 6955); and (d) the "Philippine Passport Act of 1996" (RA No. 8239). It is noted that these laws punish the modes used for committing trafficking in persons.

### III. A TREATY IS PLACED ON AN EQUAL FOOTING WITH PHILIPPINE DOMESTIC LAWS

A treaty or international agreement is on an equal footing with domestic legislation. The Philippine Supreme Court has made this clear in resolving the issue concerning the conflict between a municipal law and an international agreement, in this wise:

*The doctrine of incorporation, as applied in most countries, decrees that rules of international law are given equal standing with, but are not superior to, national legislative enactments. Accordingly, the principle *lex posterior derogat priori* takes effect - a treaty may repeal a statute and a statute may repeal a treaty. Where a treaty and a statute are on an equality, a new treaty prevails over an earlier statute, but it is also the case that a new statute prevails over a treaty.*

Thus, before the national courts of the state where the statute has been enacted, that which is later in date must prevail, unless the treaty contains provisions of international law which have been adopted in the Constitution as part of the law of the land, in which case the treaty must prevail.

### IV. PHILIPPINE LAW GOVERNING EXTRADITION

The Philippine Extradition Law (Presidential Decree No. 1069), which was issued in 1977 by then President Ferdinand E. Marcos, is the law that governs the procedure for extradition in the Philippines. It 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.” It defines extradition 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 refers to “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*’.

The Philippine Extradition Law is supplemented by jurisprudence developed by the courts in the course of resolving extradition cases and by the Rules of Court of the Philippines, which apply to extradition cases only insofar as practicable and when not inconsistent with the summary nature of the proceedings.

#### **A. Absence of a Specific Law Governing the Execution of Requests for Legal Assistance**

Unlike extradition, mutual legal assistance in criminal matters in the Philippines does not have an implementing law for the execution of requests. Nonetheless, through practice, mutual legal assistance treaties have been considered to be self-executory and are, therefore, enforced even in the absence of any domestic law. For the purpose of executing requests for legal assistance, the Rules of Court are applied insofar as pertinent.

#### **B. Some Legal and Practical Problems or Difficulties in Dealing with Various Requests for Extradition and Mutual Legal Assistance in Criminal Matters**

Generally, most of the objections raised against extradition are constitutional ones. This is understandable considering that the Philippines operates within the framework of the Constitution that provides for the rights of individuals that may be invoked against the Government and exercise of governmental powers.

Persons sought contend that extradition and extradition treaties are unconstitutional for they violate human rights, deny them due process and allow extraterritorial application of foreign laws.

There is difficulty in resolving the constitutional issues raised in extradition proceedings because of the paucity of jurisprudence on the matter. Indeed, as of this date, there are only three (3) cases

122ND INTERNATIONAL TRAINING COURSE  
VISITING EXPERTS' PAPERS

decided by the Philippine Supreme Court touching on extradition. Considering that resort to extradition and mutual legal assistance in criminal matters are generally new to both bench and bar, parties often rely on United States jurisprudence which somehow has a persuasive effect in this jurisdiction towards the gradual formulation of the country's own jurisprudence on the matter. Nonetheless, decisions arrived at by the Philippine Supreme Court establish the following jurisprudence:

1. An Extradition Treaty is Not an Ex Post Facto Law

The Philippine Supreme Court, in the case of *Wright vs. Court of Appeals*, held that the RP-Australia Extradition Treaty's retroactive application with respect to offenses committed prior to the Treaty's coming into force and effect does not violate the constitutional proscription against ex post facto laws. The Treaty is neither a piece of criminal legislation nor a criminal procedural statute. "*It merely provides for the extradition of persons wanted for prosecution of an offense or a crime which offense or crime was already committed or consummated at the time the treaty was ratified.*"

2. The Person Sought is Not Entitled to Notice and a Hearing During the Evaluation Stage of the Extradition Process

In another case, the Philippine Supreme Court held that the person sought is not entitled to the due process right to notice and hearing during the evaluation stage of the extradition process. Hence, a potential extraditee has no right to demand copies of the extradition request and its supporting documents and to comment thereon while the request is still undergoing evaluation by the Department of Justice. In that case, the Court held:

*An extradition proceeding is sui generis. It is not a criminal proceeding which will call into operation all the rights of an accused as guaranteed by the Bill of Rights. To begin with, the process of extradition does not involve the determination of the guilt or innocence of an accused. His guilt or innocence will be adjudged in the court of the state where he will be extradited.*

Hence, as a rule, constitutional rights that are only relevant to determine the guilt or innocence of an accused cannot be invoked by an extraditee especially by one whose extradition papers are still undergoing evaluation.

3. Provisional Arrest Based on a Facsimile Copy of the Request and Accompanying Documents is Valid

(i). When a fugitive has been located in a foreign country, it is often important to effect his arrest at once, upon request, to prevent his further flight. For this purpose, most extradition laws and treaties provide that the 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 extradition.

Considering the time factor, while the Philippine Extradition Law allows a request for provisional arrest to be sent either through diplomatic channels or by post or telegraph, in the advent of modern technology, the telegraph or cable have been conveniently replaced by a facsimile machine. Therefore, the transmission of the request for the provisional arrest of a fugitive and the accompanying documents, namely: a copy of the warrant of arrest against the fugitive; a summary of the facts of the case against him; particulars of his birth and address; a statement of the intention to request his provisional arrest and the reason thereof; by fax machine, more than serves this purpose of expediency.

Moreover, the request for provisional arrest of a fugitive and its accompanying documents are valid despite lack of authentication. There is no requirement for the authentication of a request for provisional arrest and its accompanying documents in both the Philippine Extradition Law and the RP-Hong Kong Agreement for the Accused and Convicted Persons. Authentication is required for the request for surrender or extradition but not for the request for provisional arrest.

(ii). Extradition courts grant bail in extradition cases, giving the opportunity to the person sought to flee to another jurisdiction. Thus, in one case, the person sought by the United States of America fled from the Philippines after posting a cash bond despite the issuance of a hold-departure order.

(iii). The Philippine Extradition Law has flaws rendering it more advantageous to the person sought. It uses the term accused, although the person sought is not accused of a crime in the Philippines, making it easy for the person sought to invoke the constitutional rights of the accused. It does not provide for an appeal in case the Requested State representing the Requesting State loses the case in the extradition court. Neither does it specify the specific provisions of the Rules of Court that are to apply in extradition cases.

(iv). Insofar as requests for legal assistance in criminal matters is concerned, there is no domestic law or rule providing for the procedure in executing requests for legal assistance. Thus, lawyers executing the request face problems on how to deal with specific requests.

(v). Strict bank secrecy law has, to a certain extent, derailed, if not impeded, the execution of requests for the examination of bank records and freezing of deposits that proceed from the commission of an offense. This is particularly true of foreign currency deposits. While it may be argued by the Department of Justice that the treaties supersede the bank secrecy deposit law inasmuch as the Mutual Legal Assistance Treaties came at a much later time, counter-arguments are made that there is no repeal or amendment on the bank secrecy law, absent express repeal in treaties. Just like in extradition proceedings, the Department of Justice is cautious in the implementation of Mutual Legal Assistance Treaties because of the absence of any definitive jurisprudence on the matter.

## **V. FORMAL PROCEDURES INVOLVED IN THE PROCESSING OF REQUESTS FOR EXTRADITION AND MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS RECEIVED FROM TREATY PARTNERS**

### **A. Extradition**

The Philippine Extradition Law provides that the Secretary of Foreign Affairs has the first opportunity to make a determination on whether a request for extradition 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 requirements are complied with, the request and supporting documents are forwarded to the Secretary of Justice who shall then designate a panel of State Counsels from the International Affairs Division (IAD) to handle the case.

In practice, the role of the Department of Justice, through its IAD, is not limited to the filing and handling of requests in court. If it deems necessary, the IAD may also request the foreign state to submit additional supporting documents pursuant to Philippine procedures to make sure that only those requests which comply with both the treaty and domestic requirements are processed.

Once all of the supporting documents are in order, the panel of State Counsels will, on behalf of the requesting state, prepare a petition for extradition and then file it with a Regional Trial Court for hearing. It has been the practice of the Department of Justice to request the arrest of the person subject of the extradition upon the filing of the extradition petition. The judge shall then issue a warrant of arrest if in the court's opinion the immediate arrest and temporary detention of the potential extraditee will best serve the ends of justice. If the Judge issues an order of arrest, the person subject of the extradition is arrested and detained at the National Bureau of Investigation (NBI) Detention Center.

The person sought may also be provisionally arrested pending receipt of the formal request for extradition as long as it can be proved that there is urgency in the provisional arrest, such as when the subject person is a flight risk.

122ND INTERNATIONAL TRAINING COURSE  
VISITING EXPERTS' PAPERS

In such a case, the moment the Department of Justice receives, from the requesting state a request for provisional arrest of the person sought to be extradited, the Department of Justice then forwards the request to the NBI. The NBI, for its part, files, for and on behalf of the requesting state, an application for the provisional arrest of the subject person with the Regional Trial Court, which, upon determination, will then issue an order of arrest. Thereafter, the subject person is arrested and detained at the NBI Detention Center.

Upon the conclusion of the hearing of the extradition case, the court renders a decision either granting the extradition or dismissing the petition. Decisions of the Regional Trial Courts acting as extradition courts are appealable to the Court of Appeals, and may also be brought by certiorari to the Supreme Court.

The decision of the court shall be promptly served on the extraditee if he was not present at the reading thereof, and the clerk of court shall immediately forward two copies thereof to the Secretary of Foreign Affairs, through the Department of Justice.

Extradition requests vary considerably in complexity and time taken to resolve. The complexity of an extradition request is dependent on the remedies availed of a potential extraditee to oppose the petition. Hence, the time taken to resolve an extradition case can vary from a few years, if a fugitive wishes to contest extradition and exercise avail of the remedies available, to a few months if a fugitive consents to extradition or voluntarily surrenders.

**B. Mutual Legal Assistance in Criminal Matters**

Insofar as Mutual Legal Assistance Treaties are concerned, the present procedure being followed is that the moment the Department of Justice receives the request for legal assistance in criminal matters, the request is assigned to a State Counsel who will go over the request. If the request is meritorious, he then files an ex-parte application before a Regional Trial Court having jurisdiction over the bank or institution where the target accounts or documents may be found. The application is accompanied by a prayer that the court issues an order freezing the target accounts or authorizing the Department of Justice to examine the documents requested or to perform acts necessary to comply with the assistance requested.

If a request does not require a court order, the lawyer assigned just coordinates with the agencies concerned in the execution of a request.

**VI. INFORMAL COOPERATION AS AN EFFECTIVE TOOL IN COMBATING CRIMES AND IN BRINGING THE PERPETRATORS TO THE BAR OF JUSTICE**

The absence of treaties with other countries does not prevent the Philippines, through its concerned agencies and authorities, from extending the desired assistance to States in the suppression of crime. For in those countries where the Philippines has no treaty, the Philippines extends assistance, which I shall call "informal cooperation," provided there is an undertaking from the Requesting State to extend the same assistance if the Philippines needs it in the future. After all, cooperation is not a one-sided affair.

This is particularly true with Japan. Notwithstanding the absence of a treaty on mutual legal assistance in criminal matters, the Philippines has had a number of requests from Japan for assistance in gathering testimonial evidence and, sometimes, object evidence. Hence, although the Philippines does not have any formal extradition or legal assistance in criminal matters treaty with Japan, this does not stop both countries from cooperating with each other in an effort to enforce their respective criminal laws.

We have also, in a number of instances, deported Japanese nationals who fled to the Philippines in the hope of avoiding prosecution in Japan. The deportation has served the purpose of extradition.

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

RESOURCE MATERIAL SERIES No. 62

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 cite a few actual cases as examples:

a. In connection with a Murder and Arson to an Inhabited Structure in Nagoya-shi, Japan, in January of 1993. The defendants Kosume Yoshimi and Pablito Franco Barlis conspired with William Gallardo Bueno and Joemarie Baldemero Chua in killing Kosume Shozaburo and in burning his house. 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.

In view thereof, 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 the crimes.

On February 5, 1996, Mr. Hiroshi 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 assistance in the criminal investigation of Murder and Arson to an Inhabited Structure against Mr. Kosume Yoshimi and Pablito Franco Barlis, which was under trial 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. The Philippine Department of Foreign Affairs indorsed all documents to the Department of Justice. On March 25, 1996, then Secretary of Justice Teofisto T. Guingona Jr., issued a Department Order designating me 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 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 8, 1993. The Japanese Public Prosecutor and his assistant went back to Japan with the sworn statement of Joemarie Baldemero Chua.

Kosume Yoshimi was sentenced to life imprisonment for Murder and Arson to an Inhabited Structure at Nagoya District Court on November 11, 1997 and his Koso-appeal was dismissed by the Nagoya High Court on November 19, 1998. Pablito Franco Barlis was sentenced to imprisonment with labor for thirteen years for Murder and Arson to an Inhabited Structure at Nagoya District Court on February 26, 1998 and the sentence became final. William Gallardo Bueno was sentenced to imprisonment with labor of fifteen years for Murder and Arson to an Inhabited Structure at Nagoya District Court on May 11, 1995 and the sentence became final.

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.

The police investigation has revealed that Fujita conspired with one Hironori Takenouchi of Izumi City, a Yakuza member. Fujita allegedly purchased 40 handguns and 800 rounds of ammunition with

122ND INTERNATIONAL TRAINING COURSE  
VISITING EXPERTS' PAPERS

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, the 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 my assistance and provided 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 p.m. of the same date, Fujita was arrested by immigration agents. After one week, he was deported to Japan.

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 assistance in a criminal investigation. The facts of the case are as follows:

Defendant Akihito Ishiyama was a postmaster of Tokiwa Post Office in Akita, Japan. He was a custodian of cash at the Tokiwa Post Office as part of his work responsibilities. At around 6:00 p.m., October 23, 1998, he appropriated the amount of 32,305,500 yen from Tokiwa Post Office for his own use, in violation of Articles 253 and 235 of the Japanese Penal Code.

Defendant Ishiyama disclosed to an investigator that he left Japan for the Philippines with cash totaling about 33,000,000 yen and gave 970,000 yen to a certain Mina, and left 30,000,000 yen with Sunny Laxa, the common-law husband of Mina.

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. I was designated by the Chief State Prosecutor of the Philippines to assist them. With this designation, I, 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.

The Akita District Court sentenced Akihito Ishiyama to imprisonment with labor for four years and six months for embezzlement, larceny and fraud on September 1, 1999 and the sentence became final.

d. On September 1, 1998, Mr. Hidea Iida, the Chief Public Prosecutor of the Osaka District Public Prosecutor's Office, wrote a letter to the judicial authorities of the Republic of the Philippines requesting assistance in criminal cases of Abandonment of Corpse and Violation of the Firearms and Swords Control Law against Chow On Park. Mr. Park allegedly intended to abandon one Haruo Nishikawa who was shot by Ho Ji Chong alias Hiroshi Matsuda.

Defendant Park received about 30 million Japanese yen in cash as a reward for the criminal act from the 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 cash on December 6, 1997 upon the defendant's order. Marucilla asked her cousin Bernardo Marilou to keep 5,480,000 yen in a safe-deposit box at Westmont Bank and 19,000,000 yen in a safe-deposit box at China Banking Corporation. Because the defendant received that money as a reward for the criminal act in this case, the money had to be seized and confiscated as evidence.

Japanese Public Prosecutor Haruhiko Fujimoto and his assistant were dispatched to Manila. 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 yen. I delivered the money to the Department of Foreign Affairs (DFA). The DFA turned over the money to the officials of the Japanese Embassy in Manila who delivered it to the Osaka District Public Prosecutors Office.

Chow On Park alias Haruhiko Arai was sentenced to imprisonment with labor to two years for Abandonment of Corpse and violation of the Firearms and Swords Control Law. The 24,480,000 yen and



RESOURCE MATERIAL SERIES No. 62

a hand gun at Osaka District Court were confiscated. His Koso-appeal was dismissed on November 4, 1999.

e. On June 29, 2001, a Japanese national, Mr. Shunichi Yamada was apprehended by the Philippine National Police at the Ninoy Aquino International Airport for attempting to smuggle two (2) firearms to Japan. He was about to board Northwest Airline flight 26 for Kansai International Airport of Japan.

The said firearms were concealed inside the x-ray safety film case inside his baggage. He was charged with Illegal Possession of Firearms at the Pasay City Prosecutors Office and the said criminal case was dismissed by the Public Prosecutor for lack of evidence.

In Japan, any person who makes preparations for the importation of handguns (possession, purchase and packing of handguns for the purpose of illegally importing such to Japan) outside the territory of Japan shall be punished unless otherwise specially provided for in the law, according to the Firearms and Sword Control Law of Japan.

On September 25, 2001, Officials of Interpol, Tokyo made a request for a copy of the entire case records against Shunichi Yamada and the two (2) firearms to establish pertinent facts regarding the circumstances of the case.

A Note Verbale No. 749-01 dated November 07, 2001, 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. The Philippine Department of Foreign Affairs indorsed all documents to the Department of Justice.

On December 13, 2001, the Secretary of Justice, through the Chief State Prosecutor in response to the said note verbale, forwarded the two (2) handguns, rounds of ammunition, the copy of the entire records and the safety cases where the firearms were concealed.

Based on the evidence received, Kyoto Prefectural Police arrested Mr. Yamada on January 09, 2002. Kyoto District Public Prosecutors Office prosecuted Yamada on January 30, 2002. Kyoto District Court sentenced Yamada to two years and six months in prison on June 27, 2002.

It may be worth mentioning that the average time it took us to comply with these requests for assistance is about one (1) week. The absence of any procedure in these cases helped reduce bureaucratic red tape and 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 would 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 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, through the use of falsified documents, or their previous blacklisting. Thus, even if they were able to enter, they are still legally subject to deportation when found.

Indeed, recently, there were a number of instances when fugitives from Japan and other countries, like the United States and South Korea, were returned to their respective countries where they committed crimes through the modes of deportation or exclusion, thereby serving the purpose of extradition.

May I cite three (3) actual cases as examples:

122ND INTERNATIONAL TRAINING COURSE  
VISITING EXPERTS' PAPERS

a. On March 07, 2002, U.S. Consul Theodore Allegra wrote a letter to the Philippine Commissioner of Immigration and Deportation requesting the apprehension and deportation of one Mr. Jeffrey Alan Pollinger, an American citizen and a federal fugitive. He is the subject of a federal warrant of arrest issued on February 22, 2002 by the United States District Court, for the Central District of California charging him with violating Section 1073 of Title 18 of the United States Code (lewd acts against a child). Mr. Pollinger allegedly sexually abused an eight-year old girl on several occasions in January 1998. The U.S. Department of State revoked his U.S. Passport issued on June 08, 2000.

On May 16, 2002, the respondent was apprehended by the Intelligence Agents of the Bureau of Immigration and Deportation. Subsequently, the corresponding deportation charge against respondent Pollinger was filed with the Board of Commissioners for violation of Section 37(a)(7) of the Philippine Immigration Act of 1940, as amended. On May 17, 2002, the Board of Commissions issued the Summary of Deportation Order finding him as being undesirable and ordered to be deported to his country of origin. On May 18, 2002, he was escorted to take a Continental Airlines flight to the United States.

b. On January 31, 2002, the Consul of the Embassy of the Republic of Korea in Makati, Philippines requested the deportation of one Mr. Sam Kim, a Korean national, who was a fugitive wanted by the Korean authorities for seven (7) counts of Fraud. On February 01, 2002, the corresponding charge sheet was filed by the Special Prosecutor of the Bureau of Immigration and Deportation. Immediately thereafter, the Board of Commissioners issued the Summary Deportation Order for violation of Section 37(a)(7) of the Philippine Immigration Act of 1940, as amended. He violated the conditions of his admission as a temporary visitor for working without the appropriate visa and for being an undocumented alien.

c. On August 10, 2001, Embassy of Japan, First Secretary Takahiko IIRI requested the deportation of Mr. Ryiyi Tanaka, a Japanese fugitive, who was issued a warrant of arrest by the Tokyo Summary Court for punching and kicking Mr. Hiroyuki Anna in his face and robbing him of 13,105,615 yen. On August 18, 2001, Mr. Tanaka was apprehended at the parking lot of the international airport when he was there to welcome a Japanese friend who had just arrived from Japan.

On August 21, 2001, the corresponding charge sheet was filed with the Board of Commissioners for violation of Section 37(a)(7) in relation to Section 45(a) of the Philippine Immigration Act of 1940, as amended. Mr. Tanaka is a Japanese criminal fugitive and a member of the Japanese Boryorku-dan (Yakuza) who fled from Japan to the Philippines through the use of a spurious Japanese passport under the name of Manasabe Watanabe, hence, an undocumented alien. He was ordered to be deported to his country of origin on August 21, 2001 by the Board of Commissioners.

What these cases indubitably show is that even outside of a formal framework, where two governments are willing to share resources, information and expertise and develop close working relations, real feasible solutions can occur. If non-treaty based cooperation can be done with Japan in those above-mentioned cases, it can also prosper in the fight against human smuggling and trafficking in persons.

## VII. CONCLUSION

In the fight against transnational organized crimes, like human smuggling and trafficking in persons, the Philippines recognizes the serious and growing need for international cooperation, particularly in mutual legal assistance, extradition, and law-enforcement and technical assistance and training. It is in the interest of the international community that crimes do not go unpunished, lest they sap the foundation of civilized society. Let us all unite and create a crime free world.