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TREATY WITH THE PHILIPPINES ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS, SIGNED AT MANILA ON NOVEMBER 13, 1994



SEPTEMBER 5, 1995.—Treaty was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE
99–118 WASHINGTON : 1995

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 5, 1995.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty Between the Government of the United States of America and the Government of the Republic of the Philippines on Mutual Legal Assistance in Criminal Matters, signed at Manila on November 13, 1994. I transmit also, for the information of the Senate, the report to the Department of State with respect to the Treaty.

The Treaty is one of a series of modern mutual legal assistance treaties being negotiated by the United States in order to counter criminal activity more effectively. The Treaty will enhance our ability to investigate and prosecute a wide variety of crimes, including drug trafficking and terrorism offenses. The Treaty is self-executing.

The Treaty provides for a broad range of cooperation in criminal matters. Mutual assistance available under the Treaty includes: 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 other purposes; executing requests for searches and seizures; assisting in proceedings related to forfeiture of assets, restitution, and collection of fines; and any other form of assistance not prohibited by the laws of the Requested States.

I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, August 2, 1995.

The PRESIDENT,
The White House.

I have the honor to submit to you the Treaty Between the Government of the United States of America and the Government of the Republic of the Philippines on Mutual Legal Assistance in Criminal Matters (the "Treaty"), signed at Manila on November 13, 1994. I recommend that the Treaty be transmitted to the Senate for its advice and consent to ratification.

The Treaty covers mutual legal assistance in criminal matters. In recent years, similar bilateral treaties have entered into force with Argentina, the Bahamas, Canada, Italy, Jamaica, Mexico, Morocco, the Netherlands, Spain, Switzerland, Thailand, Turkey, the United Kingdom (concerning the Cayman Islands), and Uruguay. Other similar treaties with Belgium, Colombia, and Panama have been signed by the United States and have received Senate advice and consent (but have not yet entered into force). In addition, treaties with the United Kingdom, South Korea, and Nigeria have been transmitted to the Senate, where they await Senate consideration. The Treaty with the Philippines contains many provisions similar to those in other recent treaties. It will enhance our ability to investigate and prosecute a variety of offenses, including drug trafficking and terrorism offenses of particular interest to the U.S. law enforcement community. The Treaty is designed to be self-executing and will not require implementing legislation.

Article 1 sets forth a non-exhaustive list of the major types of assistance provided under the Treaty, including taking the 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 other purposes; executing requests for searches and seizures; assisting in proceedings related to forfeiture of assets, restitution, and collection of fines; and rendering any other form of assistance not prohibited by the laws of the Requested State. The scope of the Treaty includes not only criminal offenses, but also proceedings related to criminal matters, which may be civil or administrative in nature.

Article 1 states that assistance shall be provided without regard to whether the conduct involved would constitute an offense under the laws of the Requested State. This paragraph is important because United States and Philippine criminal law differ significantly and a requirement of dual criminality (which is a standard aspect of extradition treaties but which we prefer not to include in mutual

legal assistance treaties) would have limited the areas in which assistance is available.

Article 1 states explicitly that it is not intended to create rights in private parties to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

Article 2 provides for the establishment of Central Authorities and defines Central Authorities for purposes of the Treaty. For the United States, Central Authority is the Attorney General or a person designated by the Attorney General. For the Republic of the Philippines, the Central Authority is the Secretary of Justice or a person designated by the Secretary of Justice. The article provides that the Central Authorities shall communicate directly with one another, or through diplomatic channels, for the purposes of the Treaty.

Article 3 sets forth the limited circumstances under which a Requested State's Central Authority may deny assistance under the Treaty. A request may be denied if it relates to a political offense or to a military offense that would not be a crime under ordinary criminal law. In addition, a request may be denied if its execution would prejudice the security or similar essential interests of the Requested State, or if it is not made in conformity with the Treaty.

Before denying assistance under Article 3, the Central Authority of the Requested State is required to consult with its counterpart in the Requesting State to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it is required to comply with the conditions. If the Central Authority of the Requested State denies assistance, it is required to inform the Central Authority of the Requesting State of the reasons for the denial.

Article 4 prescribes the form and content of written requests under the Treaty, specifying in detail the information required in each request. The article permits other forms of request in emergency situations but requires written confirmation within ten days thereafter unless the Central Authority of the Requested State agrees otherwise. All requests and supporting documents are to be submitted in English unless otherwise agreed.

Article 5 requires the Central Authority of the Requested State to execute the request promptly or to transmit it to the authority having jurisdiction to do so. It provides that the competent authorities of the Requested State shall do everything in their power to execute a request, and that courts or other competent authorities of the Requested State shall have authority to issue subpoenas or other orders necessary to execute the request. The Central Authority of the Requested State must make all arrangements for and meet the costs of representation of the Requesting State in any proceedings arising out of an assistance request.

Requests are to be executed in accordance with the laws of the Requested State except to the extent that the Treaty provides otherwise. However, the method of execution specified in the request is to be followed except insofar as it is prohibited by the laws of the Requested State. If the Central Authority of the Requested State determines that execution of the request would interfere with an ongoing investigation, prosecution, or proceeding, it may post-

pone execution or, after consulting with the Central Authority of the Requesting State, impose conditions on execution. If the Requesting State accepts assistance subject to conditions, it shall comply with them.

Article 5 further requires the Requested State, if asked to do so, to use its best efforts to keep confidential a request and its contents, and to inform the Requesting State's Central Authority if the request cannot be executed without breaching confidentiality. This provides the Requesting State an opportunity to decide whether to pursue the request or to withdraw it in order to maintain confidentiality.

The article requires the Requested State's Central Authority to respond to reasonable inquiries by the Requesting State's Central Authority regarding the status of the execution of a particular request; to report promptly to the Requesting State's Central Authority the outcome of its execution; and, if the request is denied, to inform the Requesting State's Central Authority in writing of the reasons for the denial.

Article 6 apportions between the two States the costs incurred in executing a request. It provides that the Requested State shall pay all costs, except for the following items to be paid by the Requesting State: fees of expert witnesses, costs of translation, interpretation, and transcription, and allowances and expenses related to travel of persons pursuant to Articles 10 and 11.

Article 7 requires the Requesting State to comply with any request by the Central Authority of the Requested State that information or evidence obtained under the Treaty not be used for proceedings other than those described in the request without its prior consent. Further, if the Requested State's Central Authority asks that information or evidence furnished be kept confidential or be used in accordance with specified conditions, the Requesting State must use its best efforts to comply with the conditions. Once information is made public in the Requesting State in accordance with either of these provisions, no further limitations on use apply. Nothing in the article prevents the use or disclosure of information to the extent that there is an obligation to do so under the Constitution of the Requesting State in a criminal prosecution. The Requesting State is obliged to notify the Requested State in advance of any such proposed use or disclosure.

Article 8 provides that a person in the Requested State from whom evidence is requested pursuant to the Treaty shall be compelled, if necessary, to appear and testify or produce evidence. The article requires the Central Authority of the Requested State, upon request, to furnish information in advance about the date and place of the taking of testimony or evidence.

Article 8 requires the Requested State to permit the presence of persons specified in the request (such as the accused, counsel for the accused, or other interested persons) and, to the extent allowed by its laws, to permit them to question the person giving the testimony or evidence. In the event that a person whose testimony or evidence is being taken asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, Article 8 provides that the testimony or evidence shall be taken and the claim made

known to the Central Authority of the Requesting State for resolution by its authorities.

Finally, in order to ensure admissibility in evidence in the Requesting State, Article 8 provides a mechanism for authenticating evidence that is produced pursuant to or that is the subject of testimony taken in the Requested State.

Article 9 requires that the Requested State provide the Requesting State with copies of publicly available records in the possession of government departments or agencies. The Requested State may further provide copies of records or information in the possession of a government department or agency, but not publicly available, to the extent and under the same conditions as it would provide them to its own law enforcement or judicial authorities. The Requested State has the discretion to deny such requests entirely or in part. Article 9 also provides that no further authentication shall be necessary for admissibility into evidence in the Requesting State of official records where the official in charge of maintaining them authenticates the records through the use of Form B appended to this Treaty.

Article 10 provides a mechanism for the Requesting State to invite the voluntary appearance in its territory of a person located in the Requested State. The Requesting State shall indicate the extent to which the expenses will be paid.

The Central Authority of the Requesting State has discretion to determine that a person appearing in the Requesting State shall not be subject to service of process or be detained or subjected to any restriction of personal liberty by reason of any acts or convictions that preceded his departure from the Requested State. Any safe conduct provided for by this article ceases seven days after the Central Authority of the Requesting State has notified the Central Authority of the Requested State that the person's presence is no longer required, or if the person has left the Requesting State and voluntarily returned to it. An extension of up to fifteen days for good cause may be granted by the Requesting State's Central Authority in its discretion.

Article 11 provides for transfer of a person in custody in the Requested State to the Requesting State for purposes of assistance under the Treaty (for example, a witness incarcerated in the Requested State may be transferred to the Requesting State to have his deposition taken in the presence of the defendant), provided that the person in question and the Central Authority of the Requested State agree. The article also provides for voluntary transfer of a person in the custody of the Requesting State to the Requested State for purposes of assistance under the Treaty (for example, a defendant in the Requesting State may be transferred for purposes of attending a witness deposition in the Requested State), if the person consents and if the Central Authorities of both States agree.

Article 11 establishes both the express authority and the obligation of the receiving State to maintain the person transferred in custody unless otherwise authorized by the sending State. The return of the person transferred is subject to terms and conditions agreed to by the Central Authorities, and the sending State is not required to initiate extradition proceedings for return of the person

transferred. The person transferred receives credit for time served in the custody of the receiving State.

Article 12 requires the Requested State to use its best efforts to ascertain the location or identity of persons or items specified in a request.

Article 13 obligates the Requested State to use its best efforts to effect service of any document relating, in whole or in part, to a request under the Treaty. A request for the service of a document requiring a person to appear in the Requesting State must be transmitted a reasonable time before the scheduled appearance. Proof of service is to be provided in the manner specified in the request.

Article 14 obligates the Requested State to execute requests for search, seizure, and delivery of any item to the Requesting State if the request includes the information justifying such action under the laws of the Requested State. It provides that, upon request, every official who has custody of a seized item is required to certify, through the use of Form C, the continuity of custody, the identity of the item, and the integrity of its condition. No further certification is required. The certificate is admissible in evidence in the Requesting State. The article further provides that the Central Authority of the Requested State may impose terms and conditions deemed necessary to protect third party interests in items to be transferred.

Article 15 requires the Requesting State's Central Authority, upon request of the Requested State's Central Authority, to return documents, records, or items obtained in the execution of a request as soon as possible or, if agreed by the Central Authorities, to dispose of such documents, records, or items in a mutually acceptable manner.

Article 16 provides that, if the Central Authority of one Contracting Party becomes aware of proceeds or instrumentalities of offenses that are located in the other Contracting Party and may be forfeitable or otherwise subject to seizure, it may so inform the Central Authority of that other Party. If the party receiving such information has jurisdiction, it may present this information to its authorities for a determination whether any action is appropriate. The Central Authority of the Party receiving such information is required to inform the Central Authority that provided the information of any action taken.

Article 16 also obligates the Contracting Parties to assist each other to the extent permitted by their respective laws in proceedings relating to forfeiture of proceeds and instrumentalities of offenses, restitution to victims of crime, and collection of fines imposed as sentences in criminal prosecutions. The Party having custody over proceeds or instrumentalities of offenses is required to dispose of them in accordance with its laws. Either Party may share forfeited assets, or the proceeds of their sale, to the extent not prohibited by the transferring Party's laws and upon such terms as it deems appropriate.

Article 17 states that assistance and procedures provided in the Treaty shall not prevent either Contracting Party from granting assistance through the provisions of other applicable international agreements or through the provisions of its national laws.

Article 18 provides that the Central Authorities shall consult, at times mutually agreed, to promote the most effective use of the Treaty, and may agree upon such practical measures as may be necessary to facilitate Treaty implementation.

Article 19 provides that the Treaty shall apply to any request presented after the date of its entry into force regardless of whether the relevant acts or omissions occurred prior to that date.

Article 20 provides that the Treaty shall be subject to ratification, instruments of ratification shall be exchanged in Manila as soon as possible, and the Treaty shall enter into force upon the exchange of the instruments of ratification. Article 20 further provides that either Party may terminate the Treaty by six months' written notice of the other Party.

A Technical Analysis explaining in detail the provisions of the Treaty is being prepared by the United States negotiating delegation, consisting of representatives from the Departments of Justice and State, and will be transmitted separately to the Senate Committee on Foreign Relations.

The Department of Justice joins the Department of State in favoring approval of this Treaty by the Senate as soon as possible.

Respectfully submitted,

PETER TARNOFF.

TREATY

BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

ON

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

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TREATY
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES
ON
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

The Government of the United States of America and the Government of the Republic of the Philippines,

Desiring to provide more effective cooperation between the two States in the prevention, investigation, and prosecution of crimes, such as public corruption and narcotics trafficking; and

Desiring to improve coordination and mutual assistance in criminal matters in general;

Have agreed as follows:

Article 1

Scope of Assistance

1. The Contracting Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, in connection with the prevention, investigation, and prosecution of criminal offenses, and in proceedings related to criminal matters.

2. Assistance shall include:

(a) taking the testimony or statements of persons;

(b) providing documents, records, and items of evidence;

(c) serving documents;

(d) locating or identifying persons or items;

(e) transferring persons in custody for testimony or other purposes;

(f) executing requests for searches and seizures;

(g) assisting in proceedings related to forfeiture of assets, restitution, and collection of fines; and

(h) any other form of assistance not prohibited by the laws of the Requested State.

3. Assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution, or proceeding in the Requesting State would constitute an offense under the laws of the Requested State.

4. This Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

Article 2

Central Authorities

1. Each Contracting Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.

2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by the Attorney General. For the Republic of the Philippines, the Central Authority shall be the Secretary of Justice or a person designated by the Secretary of Justice.

3. The Central Authorities shall communicate directly with one another, or through the diplomatic channel, for the purposes of this Treaty.

Article 3

Limitations on Assistance

1. The Central Authority of the Requested State may deny assistance if:

(a) the request relates to a political offense;

(b) the request relates to an offense under military law which would not be an offense under ordinary criminal law;

(c) the execution of the request would prejudice its security or similar essential interests; or

(d) the request is not made in conformity with the Treaty.

2. Before denying assistance pursuant to this Article, the Central Authority of the Requested State shall consult with the Central Authority of the Requesting State to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

3. If the Central Authority of the Requested State denies assistance pursuant to this Article, it shall inform the Central Authority of the Requesting State of the reasons for the denial.

Article 4

Form and Content of Requests

1. A request for assistance shall be in writing except that the Central Authority of the Requested State may accept a request in another form in emergency situations. In the latter case, the request shall be confirmed in writing within ten days thereafter unless the Central Authority of the Requested State agrees otherwise. All requests and all documents accompanying the request shall be in the English language, unless otherwise agreed.

2. The request shall include the following:

(a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;

(b) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including the specific criminal offenses which relate to the matter;

(c) a description of the evidence, information, or other assistance sought; and

(d) a statement of the purpose for which the evidence, information, or other assistance is sought.

3. To the extent necessary and possible, a request shall also include:

(a) information on the identity and location of any person from whom evidence is sought;

(b) information on the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;

(c) information on the identity and whereabouts of a person to be located;

(d) a precise description of the place or person to be searched and of the articles to be seized;

(e) a description of the manner in which any testimony or statement is to be taken and recorded;

(f) a list of questions to be asked of a witness;

(g) a description of any particular procedure to be followed in executing the request;

(h) information as to the allowances and expenses to which a person asked to appear in the Requesting State will be entitled;

(i) a description of any property sought to be restrained, frozen, or forfeited; and

(j) any other information which may be brought to the attention of the Requested State to facilitate its execution of the request.

Article 5

Execution of Requests

1. The Central Authority of the Requested State shall promptly execute the request or, when appropriate, transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request. The Courts or other competent authorities of the Requested State shall have authority to issue subpoenas or other orders necessary to execute the request.

2. The Central Authority of the Requested State shall make all necessary arrangements for and meet the costs of the representation in the Requested State of the Requesting State in any proceedings arising out of a request for assistance.

3. Requests shall be executed in accordance with the laws of the Requested State except to the extent that this Treaty provides otherwise. However, the method of execution specified in the request shall be followed except insofar as it is prohibited by the laws of the Requested State.

4. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding in that State, it may postpone execution, or it may make execution subject to conditions determined necessary after consultations with the

Central Authority of the Requesting State. If the Requesting State accepts the assistance subject to the conditions, it shall comply with the conditions.

5. The Requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the Central Authority of the Requesting State. If the request cannot be executed without breaching the requested confidentiality, the Central Authority of the Requested State shall so inform the Central Authority of the Requesting State, which shall then determine whether the request should nevertheless be executed.

6. The Central Authority of the Requested State shall respond to reasonable inquiries by the Central Authority of the Requesting State concerning progress toward execution of the request.

7. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the outcome of the execution of the request. If the request is denied, the Central Authority of the Requested State shall inform in writing the Central Authority of the Requesting State of the reasons for the denial.

Article 6

Costs

The Requested State shall pay all costs relating to the execution of the request, except for the fees of expert witnesses, the costs of translation, interpretation, and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 10 and 11, which fees, allowances, and expenses shall be paid by the Requesting State.

Article 7

Limitations on Use

1. The Central Authority of the Requested State may request that the Requesting State not use any information or evidence obtained under this Treaty in any investigation, prosecution, or proceeding other than that described in the request without the prior consent of the Central Authority of the Requested State. In such cases, the Requesting State shall comply with the conditions.

2. The Central Authority of the Requested State may request that the information or evidence furnished under this treaty be kept confidential or be used only subject to terms and conditions it may specify. If the Requesting State accepts the information

or evidence subject to such conditions, the Requesting State shall use its best efforts to comply with the conditions.

3. Information or evidence which has been made public in the Requesting State in accordance with paragraph 1 or 2 of this Article may thereafter be used for any purpose.

4. Nothing in this Article shall preclude the use or disclosure of information to the extent that there is an obligation to do so under the Constitution of the Requesting State in a criminal prosecution. The Requesting State shall notify the Requested State in advance of any such proposed use or disclosure.

Article 8

Taking Testimony or Evidence in the Requested State

1. A person in the Requested State from whom evidence is requested pursuant to this Treaty shall be compelled, if necessary, to appear and testify or produce evidence, including documents, records, or items.

2. Upon request, the Central Authority of the Requested State shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.

3. The Requested State shall permit the presence of such persons as specified in the request during the execution of the request, and, to the extent allowed by its laws, shall permit such persons to question the person giving the testimony or evidence.

4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, the testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting State for resolution by the authorities of that State.

5. Evidence produced in the Requested State pursuant to this Article or which is the subject of testimony taken under this Article may be authenticated by an attestation, including, in the case of business records, authentication in the manner indicated in Form A appended to this Treaty. Documents authenticated by Form A shall be admissible in evidence in the Requesting State.

Article 9

Records of Government Agencies

1. The Requested State shall provide the Requesting State with copies of publicly available records, including documents or information in any form, in the possession of government departments and agencies in the Requested State.

2. The Requested State may provide copies of records, including documents or information in any form, which are in the possession of a government department or agency in that State but which are not publicly available, to the same extent and under the same conditions as it would be available to its own law enforcement or judicial authorities. The Requested State may in its discretion deny a request pursuant to this paragraph entirely or in part.

3. Official records produced pursuant to this Article may be authenticated by the official in charge of maintaining them through the use of Form B appended to this Treaty. No further authentication shall be necessary. Documents authenticated under this paragraph shall be admissible in evidence in the Requesting State.

Article 10

Testimony in the Requesting State

1. When the Requesting State requests the appearance of a person in that State, the Requested State shall invite the person to appear before the appropriate authority in the Requesting State. The Requesting State shall indicate the extent to which the expenses will be paid. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the response of the person.

2. The Central Authority of the Requesting State may, in its discretion, determine that a person appearing in the Requesting State pursuant to this Article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any acts or convictions that preceded his departure from the Requested State.

3. The safe conduct provided for by this Article shall cease seven days after the Central Authority of the Requesting State has notified the Central Authority of the Requested State that the person's presence is no longer required, or if the person has left the Requesting State and voluntarily returned to it. The Central Authority of the Requesting State may, in its discretion, extend this period up to fifteen days if it determines that there is good cause to do so.

Article 11

Transfer of Persons in Custody

1. A person in the custody of the Requested State whose presence in the Requesting State is sought for purposes of assistance under this Treaty shall be transferred from the Requested State to the Requesting State for that purpose if both the person and the Central Authority of the Requested State consent to the transfer.

2. A person in the custody of the Requesting State whose presence in the Requested State is sought for purposes of assistance under this Treaty may be transferred from the Requesting State to the Requested State if the person consents and if the Central Authorities of both States agree.

3. For purposes of this Article:

(a) the receiving State shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorized by the sending State;

(b) the return of the person transferred to the custody of the sending State shall be subject to such terms and conditions as may be agreed upon by the Central Authorities;

(c) the receiving State shall not require the sending State to initiate extradition proceedings for the return of the person transferred; and

(d) the person transferred shall receive credit for service of the sentence imposed in the sending State for time served in the custody of the receiving State.

Article 12

Location or Identification of Persons or Items

If the Requesting State seeks the location or identity of persons or items in the Requested State, the Requested State

shall use its best efforts to ascertain the location or identity of the persons or items.

Article 13

Service of Documents

1. The Requested State shall use its best efforts to effect service of any document relating, in whole or in part, to any request for assistance made by the Requesting State under the provisions of this Treaty.

2. The Requesting State shall transmit a request for the service of a document requiring the appearance of a person before an authority in the Requesting State a reasonable time before the scheduled appearance.

3. The Requested State shall return a proof of service in the manner specified in the request.

Article 14

Search and Seizure

1. The Requested State shall execute a request for the search, seizure, and delivery of any item to the Requesting State if the

request includes the information justifying such action under the laws of the Requested State.

2. Upon request, every official who has custody of a seized item shall certify, through the use of Form C appended to this Treaty, the continuity of custody, the identity of the item, and the integrity of its condition. No further certification shall be required. The certificate shall be admissible in evidence in the Requesting State.

3. The Central Authority of the Requested State may require that the Requesting State agree to terms and conditions deemed necessary to protect third party interests in the item to be transferred.

Article 15

Return of Documents, Records, and Items of Evidence

Upon the request of the Central Authority of the Requested State at the time it furnishes documents, records, or items incident to a request, the Central Authority of the Requesting State shall return such documents, records, or items furnished to it in execution of a request as soon as possible. If agreed upon by the Central Authorities, such documents, records, or items shall instead be disposed of in a mutually acceptable manner.

Article 16

Assistance in Forfeiture Proceedings

1. If the Central Authority of one Contracting Party becomes aware that proceeds or instrumentalities of offenses that may be forfeitable or otherwise subject to seizure are located in the other Contracting Party, it may so inform the Central Authority of that other Party. If the Party receiving such information has jurisdiction in this regard, it may present this information to its authorities for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country. The Central Authority of the Party which received the information shall inform the Central Authority of the Party which provided the information of the action taken.

2. The Contracting Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offenses, restitution to the victims of crime, and the collection of fines imposed as sentences in criminal prosecutions. This may include action to temporarily immobilize the proceeds or instrumentalities pending further proceedings.

3. The Party that has custody over proceeds or instrumentalities of offenses shall dispose of them in accordance with its laws. Either Party may transfer all or part of such

assets, or the proceeds of their sale, to the other Party, to the extent not prohibited by the transferring Party's laws and upon such terms as it deems appropriate.

Article 17

Compatibility with Other Treaties

Assistance and procedures set forth in this Treaty shall not prevent either of the Contracting Parties from granting assistance to the other Party through the provisions of other applicable international agreements, or through the provisions of its national laws.

Article 18

Consultation

The Central Authorities of the Contracting Parties shall consult, at times mutually agreed to by them, to promote the most effective use of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

Article 19

Application

This Treaty shall apply to any request presented after the date of its entry into force whether or not the relevant acts or omissions occurred prior to that date.

Article 20

Ratification, Entry Into Force, and Termination

1. This Treaty shall be subject to ratification, and the instruments of ratification shall be exchanged at Manila as soon as possible.

2. This Treaty shall enter into force upon the exchange of instruments of ratification.

3. Either Party may terminate this Treaty by means of written notice to the other Party. Termination shall take effect six months following the date of notification.

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

DONE in duplicate at Manila this thirteenth day of November, 1994.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Warren Christopher

FOR THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES:

FORM A

Certificate of Authenticity of Business Records

I, _____ (Name), attest on penalty of criminal punishment for false statement or false attestation that I am employed by _____ (Name of Business from which documents are sought) and that my official title is _____ (Title).

I further state that each of the records attached hereto is the original or a duplicate of the original records in the custody of _____ (Name of Business from which documents are sought).

I further state that:

A) such records were made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

B) such records were kept in the course of a regularly conducted business activity;

C) the business activity made such records as a regular practice;

D) if such record is not the original, such record is a duplicate of the original.

_____ Signature _____ Date

Sworn to or affirmed before me, _____ (Name), a _____ (Notary Public, Judicial Officer, etc.) this _____ day of _____, 19___.

FORM B

Attestation of Authenticity of Foreign Public Documents

I, _____ (Name), attest on penalty of criminal punishment for false statement or attestation that my position with the Government of _____ (Country) is _____ (Official Title) and that in that position I am authorized by the law of _____ (Country) to attest that the documents attached and described below, are true and accurate copies of original official records which are recorded or filed in _____ (Name of Office or Agency), which is a government office or agency of _____ (Country).

Description of Documents:

_____
(Signature)

_____
(Title)

_____
(Date)

FORM C

Attestation with Respect to Seized Articles

I, _____ (Name), attest on penalty of criminal punishment for false statements or attestation that my position with the Government of _____ (Country) is _____ (Official Title). I received the articles listed below from _____ (Name of Person) on _____ (Date), at _____ (Place) in the following condition:

Description of Article:

Changes in Condition while in my custody:

Official Seal

_____
(Signature)

_____
(Title)

_____
(Date)