

Malaysia International Extradition Treaty with the United States

August 3, 1995, Date-Signed

June 2, 1997, Date-In-Force

104TH CONGRESS

2d Session

SENATE

LETTER OF TRANSMITTAL

THE WHITE HOUSE, May 17, 1996.

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 Extradition Treaty between the Government of the United States of America and the Government of Malaysia, and a related exchange of notes signed at Kuala Lumpur on August 3, 1995.

I transmit also for the information of the Senate, the report of the Department of State with respect to the Treaty. As the report explains, the Treaty will not require further implementing legislation.

This Treaty will, upon entry into force, enhance cooperation between the law enforcement communities of both countries. It will thereby make a significant contribution to international law enforcement efforts.

The provisions in this Treaty follow generally the form and content of extradition treaties recently concluded by the United States. Upon entry into force of this Treaty, the Extradition Treaty between the United States and Great Britain signed at London, December 22, 1931, will cease to have effect, with certain exceptions, between the United States and Malaysia.

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, February 17, 1996.

The PRESIDENT, The White House.

THE PRESIDENT: I have the honor to submit to you the Extradition Treaty between the Government of the United States of America and the Government of Malaysia (the "Treaty"), signed at Kuala Lumpur on August 3, 1995, and a related exchange of notes signed the same date. I recommend that the Treaty and the related notes be transmitted to the Senate for its advice and consent to ratification.

The Treaty follows generally the form and content of extradition treaties recently concluded by the United States. It represents part of a concerted effort by the Department of State and the Department of Justice to develop modern extradition relationships to enhance the United States ability to prosecute serious offenders including, especially, narcotics traffickers and terrorists.

The Treaty marks a significant step in bilateral cooperation between the United States and Malaysia. Upon entry into force, it will replace the Extradition Treaty between the United States and Great Britain that was signed at London on December 22, 1931, and entered into force on June 24, 1935. That treaty was applied to the Federated and Unfederated Malay States as of July 31, 1939, and remained effective in Malaysia. That treaty has become outmoded; the new Treaty will provide significant improvements and enhance the ability of both countries to prosecute a broad range of criminal activity. The Treaty can be implemented without further legislation.

Article 1 obligates each Contracting State to extradite to the other, pursuant to the provisions of the Treaty, any person charged with or convicted of an extraditable offense.

Article 2(1) defines an extraditable offense as one punishable under the laws of both contracting States by deprivation of liberty for a period of more than one year, or by a more severe penalty. Use of such a "dual criminality" clause rather than a list of offenses covered by the Treaty obviates the need to renegotiate or supplement the Treaty as additional offenses become punishable under the laws of both Contracting States.

Article 2(2) further defines an extraditable offense to include an attempt or a conspiracy to commit, aiding or abetting, counselling, causing or procuring the commission of or being an accessory before or after the fact to any offense described in Article 2(1). For such crimes, the Treaty accommodates the differences between U.S. and Malaysian criminal law (Malaysia, for example, has no general conspiracy statute) by creating an

exception to the general requirements regarding dual criminality and the severity of punishment if the underlying offense is an extraditable offense.

Additional flexibility is provided by Article 2(3), which provides that an offense shall be considered an extraditable offense: whether or not the laws in the Contracting States place the offense within the same category of offenses or describe the offense by the same terminology; and whether or not the offense is one for which United States federal law requires the showing of such matters as interstate transportation or use of the mails or of other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States federal court.

With regard to offenses that the Requested State considers to have been committed within its jurisdiction, Article 2(4) permits the Requested State to deny extradition. The United States recognizes the extraterritorial application of many of its criminal statutes and frequently makes requests for fugitives whose criminal activity occurred in foreign countries with the intent, actual or implied, of affecting the United States. Malaysia's extradition law gives the Minister of Home Affairs the discretion to deny an extradition request if the offense for which extradition is sought was committed within Malaysian jurisdiction. The Treaty will permit the Requested State to grant or deny extradition in such circumstances and, if extradition is denied, the Requested State shall submit the case to its competent authorities for the purpose of prosecution.

In addition, with regard to offenses committed outside the territory of the Requesting State, Article 2(5) provides that extradition shall be granted if the Requested State's laws provide for punishment of an offense committed outside of its territory in similar circumstances, and if the requirements of extradition under the Treaty are otherwise met. If the laws of the Requested State do not provide for punishment in similar circumstances, the executive authority of the Requested State may, in its discretion, deny extradition.

Article 3(1) provides that neither Contracting State shall be bound to extradite its own nationals but the executive authority of the Requested State shall have the discretion to do so. In the event that extradition is denied on that basis, Article 3(2) requires the Requested State to submit the case to its competent authorities for the purpose of prosecution if the Requesting State so requests and if the laws of the Requested State so allow.

As is customary in extradition treaties, Article 4 incorporates a political offense exception to the obligation to extradite. Article 4(1) states

generally that extradition shall not be granted for political offenses. Article 4(2) specifies three categories of offenses that shall not be considered to be political offenses:

- (a) a murder or other willful crime against the person of a Head of State of one of the Contracting Parties, or of a member of the Head of State's family;
- (b) an offense for which both Contracting Parties are obliged pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their competent authorities for a decision as to prosecution; and
- (c) an attempt or conspiracy to commit, or aiding and abetting, counselling, or procuring the commission of or being an accessory before or after the fact to, such offenses.

The Treaty's political offense exception is narrower than that contained in the 1931 treaty it is to replace. It is substantially identical to that contained in several other modern extradition treaties including the treaty with Jordan, which recently received Senate advice and consent and is in force. Offenses covered by Article 4(2)(b) of the Treaty include:

--aircraft hijacking covered by The Hague Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague December 16, 1970, and entered into force October 14, 1971;

--aircraft sabotage covered by the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal September 23, 1971, and entered into force January 26, 1973; and,

--narcotics trafficking under the United Nations Convention Against Illicit Traffic in Narcotics Drug and Psychotropic Substances, done at Vienna December 20, 1988, and entered into force November 11, 1990.

Article 4(3) provides that extradition shall not be granted if the executive authority of the Requested State determines that the request was politically motivated.

Article 4(4) permits the executive authority of the Requested State to deny extradition for military offenses that are not offenses under ordinary criminal law (for example, desertion).

Article 5 bars extradition when the person sought has been convicted or acquitted in the Requested State for the same offense, but does not bar

extradition if the authorities in the Requested State have decided not to prosecute or have decided to discontinue criminal proceedings against the person sought.

When an offense for which surrender is sought could be subject to capital punishment in the Requesting State but the same offense would not be subject to capital punishment in the Requested State, Article 6 provides that no extradition request shall be submitted without prior consultation and agreement by both States to the making of such a request. An accompanying exchange of diplomatic notes provides that, in interpreting and applying the Treaty, non-disclosure of relevant facts during such consultation, whether the non-disclosure was deliberate or otherwise and whether such facts were known or unknown at that time, would nullify the consultation and any resulting agreement reached by the Contracting States. The notes further specify that neither Contracting State shall deny automatically all requests to which Article 6 would apply, nor exercise its discretion under Article 6 based solely on the difference between the applicable punishments. This exchange clarifies that all pertinent factors must be considered before a decision is made.

Article 7 establishes the procedures and describes the documents that are required to support an extradition request. The Article requires that all requests be submitted through the diplomatic channel.

Article 7(3)(c) provides that a request for the extradition of a person sought for prosecution be supported by evidence justifying committal for extradition under the laws of the Requested State and specifically eliminates any requirement of submitting a prima facie case. An accompanying exchange of diplomatic notes clarifies that Article 7(3)(c) shall be interpreted to require the United States, when it is the Requesting State, to submit the information specified by Section 20 of the Malaysian Extradition Act of 1992, which provides for a showing of probable cause - the same standard as that recognized by United States courts when the United States is the Requested State.

Article 8 establishes the procedures under which documents submitted pursuant to the provisions of this Treaty shall be received into evidence.

Article 9 provides that all documents submitted by the Requesting State shall be in the language of the Requested State unless this requirement is waived by the Requested State.

When the Requested State considers the documentation submitted in support of a request for extradition to be insufficient to fulfill the Treaty requirements, Article 10(1) provides that the Requested State shall request additional documentation and may set a time limit for their

submission. Pursuant to Article 10(2), if sufficient documentation is not timely received to support the extradition request regarding a person sought who is in custody, the person may be discharged from custody without prejudice to subsequent rearrest and extradition if additional documents are subsequently received.

Article 11 sets forth procedures for the provisional arrest and detention of a person sought pending presentation of the formal request for extradition. As is customary in modern extradition treaties, Article 11(1) provides that a request for provisional arrest may be transmitted through the diplomatic channel or directly between the United States Department of Justice and its counterpart, here the Attorney General's Chamber in Malaysia.

Article 11(4) provides that if the Requested State's executive authority has not received the request for extradition and supporting documentation within sixty days after the provisional arrest, the person may be discharged from custody. However, upon application of the Requesting State, this period may be extended for up to thirty days after the expiration of the sixty-day period. Article 11(5) provides explicitly that discharge from custody pursuant to Article 11(4) does not prejudice subsequent rearrest and extradition upon later delivery of the extradition request and supporting documents.

Article 12 specifies the procedures governing surrender and return of persons sought. It requires the Requested State to provide prompt notice to the Requesting State regarding its extradition decision. If the request is denied in whole or in part, Article 12 also requires the Requested State to provide an explanation of the reasons therefor. If extradition is granted, the person sought must be removed from the territory of the Requested State within the time prescribed by the law of the Requested State.

Article 13 concerns temporary and deferred surrender. If extradition is sought of a person being prosecuted or serving a sentence in the Requested State, the Requested State may postpone the extradition proceedings until its prosecution has been concluded or until any sentence imposed has been served. Alternatively, that State may temporarily surrender the person to the Requesting State for the purpose of prosecution. A person who is temporarily surrendered is to be kept in custody by the Requesting State and returned to the Requested State after conclusion of the proceedings.

Article 14 sets forth a non-exclusive list of factors to be considered by the Requested State in determining to which State to surrender a person sought by more than one State.

Article 15 provides, to the extent permitted under the law of the Requested State, for the seizure and surrender to the Requesting State of property connected with the offense for which extradition is granted. Such property may be surrendered even when extradition cannot be effected due to the death, disappearance, or escape of the person sought. Surrender of property may be deferred if it is needed as evidence in the Requested State and may be conditioned upon satisfactory assurances that it will be returned. Article 15 imposes an obligation to respect the rights of third parties in affected property.

Article 16 sets forth the rule of specialty for this Treaty. It provides, subject to specific exceptions, that a person extradited under the Treaty may not be detained, tried, or punished for an offense other than that for which extradition has been granted, unless a waiver of the rule is granted by the executive authority of the Requested State. Similarly, the Requesting State may not extradite such person to a third state for an offense committed prior to the original surrender unless the Requested State consents. These restrictions do not apply if the extradited person leaves the Requesting State after extradition and voluntarily returns to it or fails to leave the Requesting State within fifteen days of being free to do so.

Article 17 permits surrender to the Requesting State without further proceedings if the person sought provides written consent thereto. The Requested State may require that such surrender shall be subject to the rule of specialty set out in Article 16.

Article 18 governs the transit through the territory of one Contracting State of a person being surrendered to the Other State by a third state.

Article 19 contains provisions on representation and expenses that are similar to those found in other modern extradition treaties. Specifically, the Requested State is required to bear expenses for the legal representation of the Requesting State in any proceedings arising out of a request for extradition. The Requested State shall bear the costs in the event it must retain private counsel to pursue the extradition request. The Requesting State is required to bear the expenses related to the translation of documents and the transportation of the person surrendered. Article 19(3) clarifies that neither State shall make any pecuniary claim against the other State arising out of the arrest, detention, examination, or surrender of persons sought under the Treaty.

Article 20 states that the United States Department of Justice and the Attorney-General's Chambers of Malaysia may consult with each other directly or through the facilities of INTERPOL in connection with the processing of individual cases and in furtherance of maintaining and

improving Treaty implementation procedures.

Article 21, like parallel provisions in almost all recent United States extradition treaties, states that the Treaty shall apply to offenses committed before as well as after the date the Treaty enters into force.

Entry into force is addressed in Article 22. That Article provides that the Treaty, together with an exchange of notes interpreting certain portions of the Treaty, shall enter into force when both parties have notified each other through a further exchange of diplomatic notes of the completion of their respective requirements for entry into force. Upon the Treaty's entry into force, the Extradition Treaty between the United States of America and Great Britain, signed at London December 22, 1931, will cease to have effect between the United States and Malaysia, except with respect to pending extradition proceedings in which the extradition documents have already been submitted to the courts of the Requested State.

Under Article 23, either Contracting State may terminate the Treaty at any time upon written notice through the diplomatic channel to the other Contracting State, with termination effective six months after the date of such notice.

A Technical Analysis explaining in detail the provisions of the Treaty is being prepared by the United States negotiating delegation and will be submitted 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 at an early date.

Respectfully submitted,

WARREN CHRISTOPHER.

EXTRADITION TREATY BETWEEN THE GOVERNMENT OF THE
UNITED STATES OF AMERICA AND THE GOVERNMENT OF
MALAYSIA

The Government of the United States of America and the Government of
Malaysia

Recalling the Extradition Treaty applicable between the Contracting
States, signed at London December 22, 1931;

Noting that both the Government of the United States of America and the
Government of Malaysia currently apply the terms of that treaty; and

Desiring to provide for more effective cooperation between the two States in the suppression of crime, and, for that purpose, to conclude a new treaty for the extradition of offenders;

Have agreed as follows:

Article 1

Obligation to Extradite

The Contracting States agree to extradite to each other, pursuant to the provisions of this Treaty, persons whom the authorities in the Requesting State have accused or convicted of an extraditable offense.

Article 2

Extraditable Offenses

1. An offense shall be an extraditable offense if it is punishable under the laws in both Contracting States by deprivation of liberty for a period of more than one (1) year, or by a more severe penalty.

2. An offense shall also be an extraditable offense if it consists of an attempt or a conspiracy to commit, aiding or abetting, counselling, causing or procuring the commission of or being an accessory before or after the fact to, any offense described in paragraph (1).

3. For the purposes of this Article, an offense shall be an extraditable offense:

(a) whether or not the laws in the Contracting States place the offense within the same category of offenses or describe the offense by the same terminology; or

(b) whether or not the offense is one for which United States federal law requires the showing of such matters as interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States federal court.

4. If the Requested State considers that the offense was committed within its jurisdiction, it may deny extradition. For purposes of this paragraph, jurisdiction means the territory of the Requested State, its air space and territorial waters, and any vessels or aircraft registered in that State if such aircraft or vessel is on the high seas or in flight. If extradition is denied pursuant to this paragraph, the Requested State shall submit the

case to its competent authorities for the purpose of prosecution.

5. If the offense has been committed outside the territory of the Requesting State, extradition shall be granted if the laws of the Requested State provide for punishment of an offense committed outside its territory in similar circumstances, and if the requirements of extradition under this Treaty are otherwise met. If the laws of the Requested State do not so provide, the executive authority of the Requested State may, in its discretion, deny extradition.

Article 3

Nationality

1. Neither Contracting State shall be bound to extradite its own nationals but the executive authority of the Requested State shall have the power to extradite such persons if, in its discretion, it be deemed proper to do so.

2. If extradition is not granted for an offense pursuant to paragraph (1), the Requested State shall, at the request of the Requesting State and if the laws of the Requested State so allow, submit the case to its competent authorities for the purpose of prosecution.

Article 4

Political and Military Offenses

1. Extradition shall not be granted if the offense for which extradition is requested is a political offense.

2. For the purposes of this Treaty, the following offenses shall not be considered to be political offenses:

(a) the murder or other willful crime against the person of a Head of State of one of the Contracting States, or a member of the Head of State's family;

(b) an offense for which both Contracting States have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution; or

(c) an attempt or conspiracy to commit, or aiding or abetting, counselling or procuring the commission of or being an accessory before or after the fact to, such offenses.

3. Notwithstanding the terms of paragraph (2) of this Article, extradition shall not be granted if the executive authority of the Requested State determines that the request was politically motivated.

4. The executive authority of the Requested State may refuse extradition for offenses under military law which are not offenses under ordinary criminal law.

Article 5

Prior Prosecution

1. Extradition shall not be granted when the person sought has been convicted or acquitted [*21] in the Requested State for the offense for which extradition is requested.

2. Extradition shall not be precluded by the fact that the authorities in the Requested State have decided not to prosecute the person sought for the acts for which extradition is requested, or have decided to discontinue any criminal proceedings which have been instituted against the person sought for those acts.

Article 6

Capital Punishment

In cases in which a person could be subject to capital punishment in the Requesting State but would not be subject to capital punishment in the Requested State for the same offense under the law of the Requested State, no request for extradition shall be submitted without prior consultation and agreement by both States to make such a request.

Article 7

Extradition Procedures and Required Documents

1. All requests for extradition shall be submitted through the diplomatic channel.

2. All requests shall be supported by:

(a) documents, statements, or other types of information which describe the identity and probable location of the person sought;

(b) information describing the facts of the offense and the procedural history of the case;

(c) a statement of the provisions of the law describing the essential elements of the offense for which extradition is requested;

(d) a statement of the provisions of law describing the punishment for the offense; and

(e) the documents, statements, or other types of information or evidence specified in paragraph (3) or (4) of this Article, as applicable.

3. A request for extradition of a person who is sought for prosecution shall also be supported by:

(a) a copy of the warrant or order of arrest, if any, issued by a judge or other competent authority;

(b) a copy of the charging document; and

(c) such evidence as would justify committal for extradition under the laws of the Requested State, provided that neither State shall require, as a condition to extradition pursuant to this Treaty, that the other State prove a prima facie case against the person sought.

4. A request for extradition relating to a person who has been found guilty of the offense for which extradition is sought shall also be supported by:

(a) a copy of the judgment of conviction, or, if such copy is not available, a statement by a judicial authority that the person has been found guilty;

(b) information establishing that the person sought is the person to whom the finding of guilt refers; and

(c) a copy of the sentence imposed, if the person sought has been sentenced, and a statement establishing to what extent the sentence has been carried out.

Article 8

Admissibility of Documents

The warrant of arrest, or the judicial document establishing the existence of the conviction, and any deposition or statement or other evidence given on oath or affirmed before any competent authority or any certified copy thereof, shall be received in evidence in any proceedings for extradition:

(a) if authenticated in the case of a warrant by being signed, or in the case

of any other original document by being certified by a judge, magistrate, or other competent authority of the Requesting State; or in the case of a copy by being certified to be a true copy of the original; and

(b) where the Requesting State is the United States of America, by being sealed with the official seal of the Attorney General of the United States or some other Minister of State; and where the Requesting State is Malaysia, by being certified by the principal diplomatic or consular officer of the United States resident in Malaysia, as provided by the extradition laws of the United States; or

(c) if it is authenticated in such other manner as may be permitted by the law of the Requested State.

Article 9

Translation

All documents submitted by the Requesting State shall be translated into the language of the Requested State unless this requirement is waived by the Requested State.

Article 10

Additional Documentation

1. If the Requested State considers that the documents furnished in support of the request for the extradition of a person sought are not sufficient to fulfill the requirements of this Treaty, that State shall request the submission of necessary additional documents. The Requested State may set a time limit for the submission of such documents, and may grant a reasonable extension of the time limit upon application of the Requesting State setting forth reasons therefor.

2. If the person sought is in custody and the additional documents submitted are not sufficient, or if such documents are not received within the period specified by the Requested State, that person may be discharged from custody. Such discharge shall not prejudice the rearrest and the extradition of the person if the additional documents are subsequently received.

Article 11

Provisional Arrest 1. In case of urgency, a Contracting State may request the provisional arrest of the person sought pending presentation of the request for extradition. A request for provisional arrest may be

transmitted through the diplomatic channel or directly between the United States Department of Justice and the Attorney-General's Chambers, Malaysia. The facilities of the International Criminal Police Organization (INTERPOL) may be used to transmit such a request.

2. The application for provisional arrest shall contain:

- (a) a description of the person sought;
- (b) the location of the person sought, if known;
- (c) a brief statement of the facts of the case, including, if possible, the time and location of the offense;
- (d) a description of the laws violated;
- (e) a statement of the existence of a warrant of arrest or a finding of guilt or judgment of conviction against the person sought; and
- (f) a statement that a request for extradition for the person sought will follow.

3. On receipt of the application, the Requested State shall take appropriate steps to secure the arrest of the person sought. The Requesting State shall be notified without delay of the disposition of its application and the reasons for any denial.

4. A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of provisional arrest pursuant to this Treaty if the executive authority of the Requested State has not received the formal request for extradition and the supporting documents required in Article 7. Upon the application of the Requesting State, this period may be extended for up to an additional thirty (30) days after the expiration of the sixty (60) day period.

5. The fact that the person sought has been discharged from custody pursuant to paragraph (4) of this Article shall not prejudice the subsequent rearrest and extradition of that person if the extradition request and supporting documents are delivered at a later date.

Article 12

Decision and Surrender

1. The Requested State shall promptly notify the Requesting State of its decision on the request for extradition.

2. If the request is denied in whole or in part, the Requested State shall provide an explanation of the reasons for the denial. The Requested State shall provide copies of the pertinent judicial decisions regarding the case upon request.

3. If the request for extradition is granted, the authorities of the Contracting States shall agree on the date and place for the surrender of the person sought.

4. If the person sought is not removed from the territory of the Requested State within the time prescribed by the law of that State, that person may be discharged from custody, and the Requested State may subsequently refuse extradition for the same offense.

5. Upon the completion of the proceedings against a person surrendered to the Requesting State, the State shall upon request inform the Requested State of the outcome of such proceedings and upon request provide it with a copy of the final court decision.

Article 13

Temporary and Deferred Surrender

1. The Requested State may postpone the extradition proceedings against a person who is being prosecuted or who is serving a sentence in that State. The postponement may continue until the prosecution of the person sought has been concluded or until such person has served any sentence imposed.

2. If the extradition request is granted in the case of a person who is being proceeded against or is serving a sentence in the territory of the Requested State, the Requested State may temporarily surrender the person sought to the Requesting State for the purpose of prosecution. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after the conclusion of the proceedings against that person, in accordance with conditions to be determined by agreement of the Contracting States.

Article 14

Requests For Extradition Made By Several States

If the Requested State receives requests from the other Contracting State and from any other State or States for the extradition of the same person, either for the same offense or for a different offense, the executive

authority of the Requested State shall determine to which State it will surrender the person. In making its decision, the Requested State shall consider all relevant factors, including but not limited to:

- (a) whether the requests were made pursuant to any treaties;
- (b) the place where each offense was committed;
- (c) the respective interests of the Requesting States;
- (d) the gravity of the offenses;
- (e) the nationality of the victim;
- (f) the possibility of further extradition between the Requesting States;
and
- (g) the order in which the requests were received from the Requesting States.

Article 15

Seizure and Surrender of Property

1. To the extent permitted under its law, the Requested State may seize and surrender all articles, documents, and evidence connected with the offense in respect of which extradition is granted. The items mentioned in this Article may be surrendered even when extradition cannot be effected due to the death, disappearance, or escape of the person sought.
2. The Requested State may condition the surrender of the property upon satisfactory assurances from the Requesting State that the property will be returned to the Requested State as soon as practicable. The Requested State may also defer surrender of such property if it is needed as evidence in the Requested State.
3. The rights of third parties in such property shall be duly respected.

Article 16

Rule of Specialty

1. A person extradited under this treaty may not be detained, tried, or punished in the Requesting State except for:
 - (a) the offense for which extradition has been granted or any lesser

offense proved by the facts on which the first mentioned extradition was grounded;

(b) any offense committed after the extradition of the person; or

(c) an offense for which the executive authority of the Requested State has consented to the person's detention, trial, or punishment. For the purpose of this subparagraph:

(i) the Requested State may require the submission of the documents specified in Article 7; and

(ii) the person extradited may be detained by the Requesting State for ninety (90) days, or for such longer time as the Requested State may authorize, while the request is being processed.

2. A person extradited under this Treaty shall not be extradited to a third state for an offense committed prior to his surrender unless the surrendering state consents.

3. Paragraphs (1) and (2) of this Article shall not prevent the detention, trial, or punishment of an extradited person, or the extradition of that person to a third state, if:

(a) that person leaves the territory of the Requesting State after extradition and voluntarily returns to it; or

(b) that person does not leave the territory of the Requesting State within fifteen (15) days of the day on which the person is free to leave.

Article 17

Waiver of Extradition Proceedings

1. If the person sought consents to return to the Requesting State after personally being advised by a competent judicial authority of the effect of such consent under the law of the Requested State, the Requested State may surrender him without further proceedings.

2. The Requested State may require that surrender pursuant to this Article shall be subject to Article 16.

Article 18

Transit

1. Either Contracting State may authorize transportation through its territory of a person surrendered to the other State by a third State. A request for transit shall be made through the diplomatic channel or directly between the United States Department of Justice and the Ministry of Home Affairs, Malaysia. The facilities of INTERPOL may be used to transmit such a request. It shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit may be detained in custody during the period of transit.

2. No authorization is required where air transportation is used and no landing is scheduled on the territory of the Contracting State. If an unscheduled landing occurs on the territory of the other Contracting State, the other Contracting State may require the request for transit as provided in paragraph (1). That Contracting State shall detain the person to be transported until the request for transit is received and the transit is effected, so long as the request is received within ninety-six (96) hours of the unscheduled landing.

Article 19

Representation and Expenses

1. The Requested State shall advise, assist, appear in court on behalf of the Requesting State, and represent the interests of the Requesting State, or otherwise make the necessary arrangements for the Requesting State's legal representation, in any proceedings arising out of a request for extradition.

2. The Requesting State shall bear the expense related to the translation of documents and the transportation of the person surrendered. The Requested State shall pay all other expenses incurred in that State by reason of the extradition proceedings.

3. Neither State shall make any pecuniary claim against the other State arising out of the arrest, detention, examination, or surrender of persons sought under this Treaty.

Article 20

Consultation

The United States Department of Justice and the Attorney-General's Chambers of Malaysia may consult with each other directly or through the facilities of INTERPOL in connection with the processing of individual cases and in furtherance of maintaining and improving procedures for the implementation of this Treaty.

Article 21

Application

This Treaty shall apply to offenses committed before as well as after it enters into force.

Article 22

Entry Into Force

1. This Treaty, together with an exchange of notes interpreting certain portions of the Treaty, shall enter into force when both parties have notified each other through a further exchange of diplomatic notes of the completion of their respective requirements for entry into force.
2. Upon the entry into force of this Treaty, the Extradition Treaty between the United States of America and Great Britain, signed at London December 22, 1931, shall cease to have effect between the United States and Malaysia. Nevertheless, the prior treaty shall apply to any extradition proceedings in which the extradition documents have already been submitted to the courts of the Requested State at the time this Treaty enters into force.

Article 23

Termination

Either Contracting State may terminate this Treaty at any time by giving written notice through the diplomatic channel to the other Contracting State, and the termination shall be effective six (6) months after the date of such notice.

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

DONE at Kuala Lumpur this 3rd day of August, 1995, in duplicate, in the English and Malay languages, both texts being authentic and, in the case of divergence of interpretation, the English text being the text that shall prevail.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF MALAYSIA:

August 3, 1995

Excellency:

I have the honor to refer to the Extradition Treaty signed today between the United States and Malaysia and to propose that the Treaty be interpreted and applied in accordance with the provisions set forth in this note.

Article 6 of the Treaty requires that in cases in which a person could be subject to capital punishment in the Requesting State but would not be subject to capital punishment [*35] in the Requested State for the same offense under the law of the Requested State, no request for extradition will be submitted without prior consultation and agreement by both States to make such a request. A consultation between the Contracting States would not constitute a consultation within the meaning of Article 6 and any agreement reached between the Contracting States as a result of such consultation would not be binding if there has been any non-disclosure of relevant facts during the consultation, whether the non-disclosure was deliberate or otherwise and,

His Excellency,

Datuk Abdullah bin Haji Ahmad Badawi

Minister of Foreign Affairs

Kuala Lumpur

whether those facts were known or unknown at the time of the consultation. Neither Contracting State shall deny automatically all requests to which Article 6 would apply, nor exercise its discretion under Article 6 based solely on the difference between the applicable punishments.

Article 7(3) of the Treaty requires that a request for the extradition of the person sought for prosecution be supported by, among other things, "such evidence as would justify committal for extradition under the laws of the Requested State." In the case of a request from Malaysia to the United States, Article 7(3)(c) shall be interpreted to require information establishing probable cause to believe that an offense was committed and that the person sought committed the offense. In the case of a request from the United States to Malaysia, Article 7(3)(c) shall be interpreted to require the information specified by section 20 of the Malaysian Extradition Act of 1992, as set forth in the Attachment hereto. Neither State shall require, as a condition of extradition pursuant to this Treaty,

that the other State establish a prima facie case of the guilt of the person sought.

I have the further honor to propose that this Note and Your Excellency's Note in reply confirming on behalf of the Government of Malaysia the foregoing arrangements shall be regarded as constituting an agreement between the two Governments, which shall enter into force simultaneously with the Extradition Treaty.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

Malaysian Note

August 1995

H.E. Mr. Warren Christopher

U.S. Secretary of State.

Excellency,

I have the honor to acknowledge the receipt of Your Excellency's Note of today's date, which reads as follows:

"I have the honor to refer to the Extradition Treaty signed today between the United States and Malaysia and to propose that the Treaty be interpreted and applied in accordance with the provisions set forth in this Note.

Article 6 of the Treaty requires that in cases in which a person could be subject to capital punishment in the Requesting State but would not be subject to capital punishment in the Requested State for the same offense under the law of the Requested State, no request for extradition will be submitted without prior consultation and agreement by both States to make such a request. A consultation between the Contracting States would not constitute a consultation within the meaning of Article 6 and any agreement reached between the Contracting States as a result of such consultation would not be binding if there has been any non-disclosure of relevant facts during the consultation, whether the non-disclosure was deliberate or otherwise and whether those facts were known or unknown at the time of the consultation. Neither Contracting State shall deny automatically all requests to which Article 6 would apply, nor exercise its discretion under Article 6 based solely on the difference between the applicable punishments.

Article 7(3) of the Treaty requires that a request for the extradition of the person sought for prosecution be supported by, among other things, "such evidence as would justify committal for extradition under the laws of the Requested State." In the case of a request from Malaysia to the United States, Article 7(3)(c) shall be interpreted to require information establishing probable cause to believe that an offense was committed and that the person sought committed the offense. In the case of a request from the United States to Malaysia, Article 7(3)(c) shall be interpreted to require the information specified by section 20 of the Malaysian Extradition Act of 1992, as set forth in the Attachment hereto. Neither State shall require, as a condition of extradition pursuant to this Treaty, that the other State establish a prima facie case of the guilt of the person sought.

I have the further honor to propose that this Note and Your Excellency's Note in reply confirming on behalf of the Government of Malaysia the foregoing arrangements shall be regarded as constituting an agreement between the two Governments, which shall enter into force simultaneously with the Extradition Treaty. I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration."

I have the further honor to confirm on behalf of the Government of Malaysia that the above proposal is acceptable to the Government of Malaysia and that Your Excellency's Note and this Note in reply shall constitute an agreement between the two Governments, which shall enter into force simultaneously with the Extradition Treaty.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

LAWS OF MALAYSIA

Act 479

EXTRADITION ACT 1992

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title and application.

2. Order of the Minister.
3. Special direction of the Minister applying this Act where no order has been made under section 2.
4. Direction of the Minister to apply procedure in section 20.
5. Interpretation.

PART II

EXTRADITION OFFENCE

6. Extradition offence.
7. Law of a country.

PART III

RETURN OF FUGITIVE CRIMINALS

8. Restrictions on return of fugitive criminals.
9. Exceptions to political offences.
10. When consent of the Minister is necessary.

PART IV

PROCEDURE FOR RETURN OF FUGITIVE CRIMINALS

11. Liability of fugitive criminal to be apprehended and returned.
12. Requisition for return of fugitive criminal.
13. Issue of warrants by Magistrate.
14. Magistrate to report issue of provisional warrant to Minister.
15. Procedure in respect of a fugitive criminal apprehended on a warrant issued under paragraph 13(1)(a).
16. Procedure in respect of fugitive criminal apprehended on a provisional warrant.

17. Procedure in respect of a fugitive criminal apprehended on a provisional warrant when order has been received by the Magistrate.
18. Powers and jurisdiction of Sessions Court.
19. Procedure before Sessions Court.
20. Procedure before Sessions Court where a special direction has been given under section 4.
21. Return of fugitive criminal.
22. Waiver of committal proceedings by fugitive criminal.
23. Depositions to be evidence.
24. Authentication of foreign documents.

PART V

RETURN OF FUGITIVE CRIMINALS TO BRUNEI DARUSSALAM AND THE REPUBLIC OF SINGAPORE

25. Application to Brunei Darussalam and Singapore.
26. Endorsment of warrant issued in Brunei Darussalam or Singapore.
27. Warrant executed in Brunei Darussalam or Singapore deemed to be validly executed in Malaysia.
28. Transfer of persons to Brunei Darussalam or Singapore.

PART VI

RETURN OF FUGITIVE CRIMINALS WHO ARE ALSO PRISONERS TO STAND TRIAL

29. Procedure for return.
30. Fugitive criminal ceases to be liable to serve the sentence in Malaysia, time spent in custody in connection with issue of temporary surrender warrant.
31. Issue of warrant by Minister.

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RETURN OF ACCUSED OR CONVICTED PERSONS TO MALAYSIA

- 32. Extraditable offences.
- 33. Conveyance of accused or convicted person returned.
- 34. Accused or convicted person returned to Malaysia not to be tried for previous offence or returned to another country.
- 35. Persons temporarily returned to Malaysia.

PART VIII

HAREAS CORPUS AND REVIEW

- 36. Application for habeas corpus.
- 37. Review by High Court.

PART IX

MISCELLANEOUS

- 38. Country includes colonies, dependencies, protectorates, vessels or aircraft.
- 39. Liability of fugitive criminal to be arrested and returned.
- 40. Minister may direct detention of fugitive criminal on transit.
- 41. Appearance on behalf of the Public Prosecutor.
- 42. Jurisdiction as to offences committed at sea or in air.
- 43. Discharge of fugitive criminal if not returned within three months.
- 44. Provisions in the Criminal Procedure Code when applicable.
- 45. Property found on fugitive criminal.
- 46. Forms.
- 47. Power of Minister to discharge any fugitive criminal in custody.

48. Simultaneous requisitions.
49. Discretion in respect of return of certain fugitive criminals.
50. Taking of evidence for purpose of criminal matters pending in a country.
51. Witnesses to attend and give evidence, etc.
52. Taking of evidence for purpose of return of fugitive criminals to Malaysia.
53. Rules.

PART X

54. Repeal.

SCHEDULE.

20. (1) Where a direction has been given by the Minister under section 4, the Sessions Court shall--

- (a) after hearing any representation made in support of the extradition request;
- (b) upon the production of supporting documents in relation to the offence;
- (c) upon being satisfied that the alleged act or omission of the fugitive criminal would, if it had taken place in Malaysia, constitute an offence under the laws of Malaysia;
- (d) if the fugitive criminal does not satisfy the Court that there are substantial grounds for believing that--
 - (i) the offence is an offence of a political character, or that the proceedings are being taken with a view to try or punish him for an offence of a political character;
 - (ii) prosecution for the offence in respect of which his return is sought is barred by time in the country which seeks his return;
 - (iii) the offence is an offence under military law which is not also an offence under the general criminal law;

(iv) the fugitive criminal has been acquitted or pardoned by a competent tribunal or authority in the country which seeks his return or in Malaysia;

(v) the fugitive criminal has undergone the punishment provided by the law of the country which seeks his return or of Malaysia in respect of the extradition offence or any other offence constituted by the same conduct as that which constitutes the extradition offence;

(e) upon being satisfied that the fugitive is not accused of an offence, nor undergoing a sentence in respect of an offence, in Malaysia, other than the extradition offence in respect of which his return is sought.

commit the fugitive criminal to prison to await the order by the Minister for his surrender.

(2) In the proceedings before the Sessions Court under subsection (1) the fugitive criminal is not entitled to adduce, and the Court is not entitled to receive, evidence to contradict the allegation that the fugitive criminal has done or omitted to do the act which constitutes the extradition offence for which his return is sought.

(3) In this section, "supporting documents" means--

(a) any duly authenticated warrant for the arrest of the fugitive criminal issued by the country which seeks his return or any duly authenticated copy of such warrant;

(b) any duly authenticated document to provide evidence of the fugitive criminal's conviction or sentence or the extent to which a sentence imposed has not been carried out;

(c) a statement in writing setting out a description of, and the penalty applicable in respect of, the offence and a duly authenticated statement in writing setting out the conduct constituting the offence.