

FOREIGN RELATIONS

Laying the groundwork for extradition treaty

One of the principal irritants in Philippine-American relations in the past was the seeming disregard of Philippine laws by Clark Air Force Base authorities. There had been several occasions when US airmen facing criminal charges before the local courts were allowed to leave the country with the tacit consent of CAFB authorities and in violation of the RP-US bases agreement of 1946. On some occasions, the US sent back these airmen following strong protests from the Philippine government. On other occasions, it refused to do so.

It was to avoid future friction that the Philippines first suggested the forging of an extradition treaty several years ago. A few months back, the Philippines renewed its proposal for such a treaty in the wake of the flight to the US of both Filipinos and Americans involved in criminal acts here. Again, this need was emphasized when US Vice President Spiro T. Agnew visited the Philippines last February. President Marcos showed Mr. Agnew evidence, including confessions, against persons now in the US who were involved in a conspiracy to assassinate the President and stage a coup d'etat.

Two months after the Agnew visit, the foreign office announced that the US had agreed to start negotiations on the proposed extradition treaty. The Philippine panel will meet with its American counterpart soon, Padre Faura said. Groundwork for such talks has been completed and a draft of the treaty prepared.

This will be the first extradition treaty ever to be negotiated by the Philippines with another country since it regained independence in 1946.

Extradition has been defined by one legal authority as "the surrender by one State to another of an individual convicted or accused of having committed a crime within the jurisdiction of the demanding State, for trial and punishment." In a sense, extradition is the surrender of power over an individual within the jurisdiction of the State of refuge, and the latter under obligation to deliver up such an individual to the demanding State if there is a treaty binding the two States.

There are two main types of extradition treaties. The first is the classical type, which specifies the offenses for which extradition is provided. The second is the modern type, such as the Montevideo Convention on Extradition of 1933, which contains no list of offenses, but provides for extradition in all cases where the offense is punishable in both the demanding and surrendering States.

There are a number of fundamental principles governing extradition and which, in the view of some legal writers, underpin an international scale. The first widely accepted theory is that a State is under no legal obligation to surrender a fugitive from justice in the absence of an extradition treaty. If such a state decides to surrender an individual despite the absence of a treaty, it does so only as



President Marcos, US Vice President Spiro Agnew with US-RP officials: reexamination of existing agreements, negotiations for extradition treaty.

a matter of international comity. The second is that the person extradited can be tried in a demanding State only for the offense charged in the extradition proceeding and for a crime mentioned in the extradition treaty. The third is that religious and political offenses are not extraditable, while the fourth specifies that the crime committed must have been perpetrated within the jurisdiction of the demanding State.

Under Philippine law, it has been held that penal acts committed by Filipino citizens are territorial in nature, so that the local courts have the power to try cases committed within their territorial jurisdiction. Hence, if a crime is committed by a Filipino national in Philippine territory, and the accused flees the country, a Philippine court can try him once that person comes under its jurisdiction. This is where the need for an extradition treaty comes in.

It may be apropos to state that other countries are also interested in forging such treaties in view of the propensity of criminal elements, availing themselves of modern transportation facilities, to seek refuge in other lands. The US itself is faced with the problem of extraditing American criminals who have fled to countries with which the US has no extradition treaty, as in some parts of South America, to escape punishment. German World War II criminals have also used South America as a sanctuary against prosecution.

Nobody can predict how soon an extradition treaty can be forged between the Philippines and the US. But there seems to be a consensus that such a treaty can help remove some of the irritants in Philippine-American relations as well as enable either country to punish criminals who seek refuge in the other.

PERSPECTIVES

Justice to all

By VICENTE ABAD SANTOS
Secretary of Justice



Secretary VICENTE ABAD SANTOS

Today, more than ever before, we stand close to an approximation of the political ideal of justice, under which every man will be allotted his due.

We work and fulfill our duties under a government conscious that it is the potent and omnipresent teacher. Recent events have helped us to realize clearly that for good or ill, the government teaches the whole people by its example. Under the Old Society, a segment of the government became a law-breaker and thus it bred contempt for law; it invited every man to become a law unto himself; it invited anarchy. In the end, we had to learn that chaos serves no social end.

Yet our government then, defective as it was, contained within itself the means of securing the execution of its own laws against other dangers than those which occurred every day. Fully in accordance with the 1935 Constitution, President Marcos proclaimed martial law not only to save the Republic, but also to reform society. As he did so, he taught his countrymen that the science of government is the most abstruse of all sciences. Indeed, we might question whether it can be called a science, since it has few fixed principles, and practically consists in little more than the exercise of a sound discretion, applied to the exigencies of the state as they arise. In the ultimate analysis, government is the science of experiment.

At the genesis of the New Society, timid doubts were expressed as to the state of our liberty. Would it be curtailed? Would it suffer diminution? Subsequent developments have provided the answer: liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed on the interests of the community. For to be free is to live under a government by law. To be enjoyed, liberty must be limited by law, for law ends where anarchy begins.

To the voices of anarchy, we reply that liberty is a term of two hundred definitions, and the one we adopt for our own is that which does not give a right

to every man to do just what he pleases but that which consists in an equal right to all the citizens to have, enjoy, and do, in peace, security, and without molestation, whatever the equal and constitutional law of the country admit to be consistent with the public good.

The French say, *Le ley est come apparel, que alter ove le temps* — the law is like apparel, which alters with the time. In a famous essay on the growth of the law, this parallel thought was enunciated: Existing rules and principles can give us our present location, our bearings, our latitude and longitude. The inn that shelters for the night is not the journey's end. The law, like the traveler, must be ready for the morrow. It must have the principle of growth. And since every age should be mistress of its own law, it was only fitting that on January 17, 1973 we ratified a new Constitution which became effective that same day. Thus did we follow the principle that the center of gravity of legal development lies not in legislation, nor in juristic science, nor in judicial decision, but in society itself.

The program of reform embodied in the new Constitution emphasizes the spirit of discipline and sacrifice. Let us pay heed to the wise exhortation that democracy in any sphere is a serious undertaking. It substitutes self-restraint for external restraint. It is more difficult to maintain than to achieve. It demands continuous sacrifice by the individual and more exigent obedience to the moral law than any other form of government.

In the Department of Justice, we answer the call to national discipline by insuring that we dispense swiftly equal and exact justice to all men, of whatever state or persuasion, religious or political. After all, justice is the end of government and of civil society. Echoing the immortal Magna Carta, we say that to no one will we refuse or delay right or justice.