CRONIES AND ENEMIES:

THE CURRENT PHILIPPINE SCENE

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THE PHILIPPINE STUDIES PROGRAM was initiated in 1975 to offer an integrated program of academic instruction and research on Philippine studies, promote scholarly and professional interest in the Philippines, provide information and educational resources to groups and individuals interested in the Philippines or in Filipinos, and further develop a comprehensive collection of Philippine research material.

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PREFACE

In the spring of 1982, a former Philippine Senator and a Jesuit priest who had been a long-time Professor and Vice President at the Ateneo de Manila University found themselves residing in Hawaii. The senator, Jovito R. Salonga, and the priest, John F. Doherty, have much in common. Both have pursued long and distinguished careers in Philippine politics and academia, respectively. Both have taught for several years in major Philippine universities and institutions. Both have also conducted extensive research and published several books and professional articles in their respective fields - Law and Sociology. Finally, both have an inclination toward critical insight, as a result of which they are unwelcome to the current Marcos regime in the Philippines. Salonga is being linked to various anti-regime activities and Doherty, an American citizen, is being refused re-entry to the country for "highly confidential reasons" the Philippine Immigration Commissioner "is not at liberty to divulge." In a sense, Salonga is "exiled" indefinitely, and Doherty has in effect been deported *de facto*!

Because their careers and contributions have enriched the state of Philippine scholarship, they were asked to give lectures on their specializations in the Philippine Studies Program Lecture Series of the Center for Asian and Pacific Studies at the University of Hawaii. The lecture series invites scholars, researchers, professionals, and other individuals who can talk about topics related to the Philippines or Filipinos, particularly their own research. The series has gone on regularly since 1975 when the Philippine Studies Program was established at the university as part of the bigger programs on Asian and Liberal Studies. Speakers have either been invited or have volunteered to give lectures which are free to the public.

In their lectures, Salonga and Doherty addressed topics of current concern both in the Philippines and abroad: the much-talked about extradition treaty between the Philippines and United States, and the Philippine economy, which has seen major changes since martial law was imposed by Marcos. Their lectures were written up and edited for publication in the Occasional Paper Series, which is also a regular component of the Philippine Studies Program. This publication series aims to provide an outlet for scholarly research and writing on Philippine-related themes. It complements the academic instruction aspect of the Program, which consists of several courses on the Philippines/Filipinos that are taught by various departments and programs at the university.

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INTRODUCTION: PROTECTING THE CRONIES AND HOUNDING THE ENEMIES

BY BELINDA A. AQUINO

September 1983 marks the tenth year of Philippine authoritarian rule under Ferdinand Marcos. Critical analysis of the Marcos record has revolved around the destruction of democratic institutions in the Philippines and the poor performance of the economy, relative to the goals he has set. Increased militarization and endless legalistic manipulations of the political system have effectively consolidated power in the regime, precluding any real opposition and avenues for genuine participation and expression. The political legacy of Marcos to Filipinos will be one of uncertainty, instability, and chaos as no clear lines of succession emerge even with the formation of a so-called Executive Committee of 15 to handle the presidency in case Marcos dies or gets incapacitated. How the Committee will do this, nobody knows, perhaps not even the Committee Members themselves. What seems clearer is Marcos' desire to have his wife, Imelda, in contention as a possible successor. He recently named her to the Executive Committee "with the understanding that this will serve the end of training qualified individuals for national leadership, especially representatives of the younger generation and the women, whose representation in decision and policymaking has so far been underemphasized."[1] (Underscoring supplied.) She has repeatedly disavowed any ambitions for the presidency but her next "Imelda-ism" is predictable: if the people want her to serve, she will follow their wishes. Of course, an outpouring of sentiment from the *barangays* (symbolizing the people) all over the country will be orchestrated to give her an aura of strong popular support. Her emergence as an active contender further complicates the political picture that is now characterized as "a game that is clearly post-Marcos."[2] It raises a number of questions such as, will the military allow it? Is she acceptable to the United States, a key factor in the future of Philippine politics? Does she really have a genuine popular mandate? Is she going to be another Isabel Peron? Needless to say, political confusion and possibly violence are likely to result from the transition to a post-Marcos Philippines as several other contenders vie for power. Some quarters are predicting that the current civilian dictatorship will be replaced by "an outright military regime or a military-backed junta of U.S.-oriented politicians and technocrats."[3]

If politics is a casualty of Marcos' rule, economics is probably a graver disaster for Filipinos, particularly over the last few years. The government technocrats glibly point out visible gains in the economy achieved by the Marcos regime since martial law was imposed. But these are belied by more objective and reliable assessments of institutions such as the World Bank (WB), the U.S. Agency for International Development (AID), and the International Monetary Fund (IMF), which have supported most of the Marcos large-scale economic ventures. "In a fit of supreme irony," observes a specialist on Philippine affairs, "the World Bank recently published a two-volume study of Philippine poverty in which endless statistics were assembled showing that things had indeed gotten worse, that the Philippine government was not doing enough, and that some of its (narrow) policies were in need of change."[4] The WB study noted increasing rural and urban poverty in the Philippines, with the latter escalating from 15.3% in pre-martial days to 30.9% in Manila and from 29.1% to 45.6% in

other urban areas in 1975. The AID study also noted alarming poverty levels and designates at least four million households as living in poverty. That can easily translate to half of the entire population. Visitors to the Philippines such as Pope John Paul II have expressed alarm at the large numbers of poor people they see upon arriving in Manila. A recent *New York Times* article mentions that the number of squatters in Metro Manila has risen 38% (to over 1.6 million) in just one year.[5] If the country is indeed progressing economically, why is there so much poverty around? Marcos' technocrats rationalize this by saying that there are no quick solutions to poverty and income inequality, which are long-term problems, and that even rich countries like the United States suffer from poverty and inequality. Everytime criticism is directed at the dismal performance of the economy, Marcos' apologists are quick to blame external factors like the rising price of oil and world-wide inflation, and to take comfort in the fact that even richer countries have more serious problems with their economies.

No less than the IMF itself has expressed serious concern about the slow growth of the Philippine gross national product, which it estimates to be "no more than 2.5%, less than half the 5.5% originally projected or the level attained the year before."[6] It has consequently advised the Marcos government to scale down its "over-ambitious economic programme" and is reluctant to extend the standby credit arrangement to the Philippines "in view of the economy's questionable performance."[7] Prime Minister Cesar Virata has had to fight back "against the spate of criticism of the country's economic performance and its ability to weather the current world recession."[8] Criticism has been directed at the government's bailing out presidential cronies like Disini, Cuenca, and Silverio, which has raised "two distinct issues: whether more astute businessmen without 'special' relationships could have avoided the pitfalls of the three and whether it is the government's responsibility to bail out wayward firms."[9] It is not difficult to infer scandal and corruption among powerful elements associated with and protected by the regime at a scale probably exceeding that of any time in the past.

Thus, from most indications, the political and economic future of the Philippines is grim. The essays presented in this publication analyze two important developments in the current Philippine economic and political scene under Marcos. The first is by Father John F. Doherty, S.J., entitled: "Who Controls the Philippine Economy: Some Need Not Try as Hard as Others." The curious title is obviously a take-off from Imelda Marcos' now classic quote in an interview with Roy Rowan of *Fortune Magazine* in 1979. Rowan asked her to comment on reports that relatives and friends of the Palace have enriched themselves since martial law. Her curt and famous reply was, "Well, some are smarter than others."[10] Consequently, a group of young businessmen and professionals in Manila put out a 36-page pamphlet in late 1979, calling it "Some Are Smarter Than Others." It documented the activities of certain individuals collectively called "The Octopus Gang" who became "instant millionaires" because of their connections with the presidential Palace. The publication was eventually suppressed by the military and its publishers driven underground.

Doherty started researching this new economic elite in 1977. He published his findings in *A Preliminary Study of Interlocking Directorates Among Financial, Commercial, Manufacturing And Service Enterprises in the*

Philippines (Manila, 1979). He continued the research and an updated version was to have been published in June 1980. However, he had to leave the Philippines a month before to visit an ailing twin brother in the U.S. and would be returning to Manila in November 1980. He left his press-ready manuscript behind in his office at the Ateneo de Manila University. While he was in the U.S., he received a letter from Philippine Immigration Commissioner Edmundo Reyes revoking his visa to re-enter the Philippines. Doherty is still an American citizen even if he is a long-time resident of the Philippines. He found out later that his manuscript was leaked to the military and he received galley proofs of it with various portions missing. He suspects that it might have been leaked by one of his research assistants whose father was a colonel in the military. In any case, it has been nearly two years since he was refused re-entry to the Philippines, and all attempts to work for his return by various individuals including Cardinal Sin have failed so far. It is clear that his research, which uncovered unsavory and incriminating evidence against certain powerful groups and individuals in the current regime, was responsible for his "deportation." Doherty is one of several religious figures who have incurred the wrath of the regime and are either deported or under detention or surveillance.

A Ph.D. in Sociology from Fordham, Doherty was Vice President for Academic Affairs of the Ateneo de Manila University in 1964-71. He taught Sociology for ten years at the Ateneo and was Visiting Professor at Marquette in 1971-72. He has lectured in other institutions such as the Asian Social Institute, the Loyola School of Theology, and the East Asian Pastoral Institute, all in Manila. He edited *Philippine Sociological Review* in 1963-67 and served on the Board of Directors of the Ateneo (including the Institute of Philippine Culture), Asian Institute of Management, the Faura Research Foundation, and Notre Dame of Jolo.

Prior to his departure from the Philippines, Doherty directed numerous research projects among the poor in the Philippines. These projects were aimed at viewing government programs through the eyes of those affected by them. He is the author of nine books and two monographs, among them: *The Sociology of Religion, Can We Predict a Philippine Revolution?, Readings in Peripheral Development,* and the book on interlocking directorates mentioned earlier. He has published widely in such journals as *Philippine Sociological Review, Insight, Journal for the Scientific Study of Religion* and other publications.

The article written by him in this volume is a summary of his complete study on interlocking directorates in the Philippines, including his aborted manuscript, which he has carefully reconstructed.

If cronies are favored in current Philippine society, the enemies of Marcos, both in and out of the country, are hounded and harassed. For enemies in the U.S., the long arm of the regime may be catching up with them via extradition. The second essay in this volume is written by Jovito R. Salonga, a well-known political figure in the Philippines and recognized authority on international law who is currently residing in the U.S. His study deals with the extradition treaty that the Marcos government has negotiated with the Reagan administration to be presented to the U.S. Congress for ratification. This is a new dimension to Philippine external politics. It is interesting to note that Philippine-American relations go back a long way, but up until the imposition of martial law no attempt was

made to forge an extradition treaty between the two countries. In 1973, the Marcos government, through Foreign Affairs Secretary Carlos P. Romulo, started talks with the United States, but it was not until November 1981 that an extradition treaty was quietly signed by representatives of the Marcos regime and the U.S. State Department.

The various issues, ramifications, implications, and other vital matters related to the proposed treaty are authoritatively analyzed by Salonga, who has done extensive legal research and published widely. It is his thesis that it is in the U.S. that the vocal and active critics of Marcos can do major damage to his regime and they must be stopped. Extradition would facilitate this process of silencing and intimidating Marcos' critics abroad, while giving the appearance of a legal action that can routinely happen between two countries.

Before the U.S.-Philippine Extradition Treaty can be introduced to Congress, however, the enabling legislation (U.S. Extradition Act of 1982, Senate 1040 and HR 6046) has to be passed. It is now being debated and the Senate and House votes may be scheduled in September 1982. Until now, the State Department has not submitted the U.S.-Philippine Extradition Treaty to the Senate Foreign Relations Committee. It is probably waiting for the prior enabling legislation to be decided by Congress.

Salonga is a household word in Philippine politics, having been elected twice (in 1965 and 1971) as Senator with the highest number of votes in the country. He and several opposition leaders were seriously wounded in the infamous August 1971 Plaza Miranda bombing incident in Manila, which has not been solved. The tragedy disabled Salonga physically and a hundred grenade splinters are still lodged in his body, but it did not damage his mind and spirit. Ironically, he was arrested and detained by the Marcos government without charges in October 1980, after the bombing of an international travel conference in which Marcos was speaking. After his release, he was allowed to travel to the U.S. for medical treatment.

Salonga finished law at the University of the Philippines and topped the bar examination with a 95.3% rating. In Philippine society, topping the bar is a national honor. He went to Harvard for his Ll.M. degree and later to Yale for his J.S.D. He returned to the Philippines to practice and teach law, becoming a Law Professor and Dean of the Far Eastern University Law School in Manila. He has authored several books that are used as texts in Philippine law schools. Among them are: *Philippine Law on Evidence* (1964), *Philippine Law on Private Corporations* (1967), *Public International Law* (1974), and *Private International Law* (1980). He is currently on a visiting fellowship at Yale, where he is revising his book on international law.

Written by two distinguished individuals, these monographs offer a greater awareness and understanding of the changing social, economic, and political scene in the Philippines under the aegis of Marcos authoritarianism. Doherty's study presents a credible explanation of what ails the Philippine economy - something that the technocrats and other stalwarts of the Marcos regime will not admit, at least not in the open. Salonga's forthright

and penetrating analysis helps us to understand the complexities of the extradition issue, which can have serious implications for the Filipino community in America and the bigger area of Philippine-American relations if it materializes.

Every regime has its cronies and enemies. These essays talk about these two groups of people in the current Philippine scene responsibly, reasonably, and freely. They should be refreshing reading for Filipinos, given the fact that critical and free expression in the country has been suppressed for far too long.

FOOTNOTES

[1]"Marcos Names Wife to Key Committee," *Honolulu Star Bulletin* (7 Aug. 1982), p. A-4.

[2]See "The Politics of Life and Death," *Far Eastern Economic Review* (14 May 1982), pp. 38-39.

[3]This prediction was made by Alejandro Lichauco, a Filipino economist and well-known Marcos critic. See "U.S.-Backed Junta After FM," *We Forum* (3-6 July 1982), pp. 1 and 7. *We Forum* is a bi-weekly published in Manila and is reportedly the only "opposition " newspaper allowed to publish.

[4]Robert B. Stauffer, "The Philippine Development Model: Global Contradictions, Crises, and Costs," Paper presented at the Second International Philippine Studies Conference, Honolulu, Hawaii, June 28-30, p. 20. The two-volume study referred to is *Aspects of Poverty in the Philippines: A Review and An Assessment* (Washington, D.C.: World Bank, 1980).

[5]Pamela G. Hollie, "Manila Squatters Are an Eyesore for Mrs. Marcos," *New York Times* (30 June 1980), p. A-2.

[6]Richard Nations, "Reduce Borrowing and Cut Growth Rates, the IMF Tells the Philippines - A Chiller for Manila," *Far Eastern Economic Review* (30 April 1982), p. 40.

[7]*Ibid.*

[8]Guy Sacerdoti, "Virata Fights Back," *Far Eastern Economic Review* (21 May 1982), p. 64.

[9]Leo Gonzaga and Guy Sacerdoti, "Operation Cold Comfort," *Far Eastern Economic Review* (14 May 1982), p. 88.

[10]See Roy Rowan, "The High-Flying First Lady of the Philippines," *Fortune Magazine* (2 July 1979), p. 92.

A. WHO CONTROLS THE PHILIPPINE ECONOMY: SOME NEED NOT TRY AS HARD AS OTHERS

BY JOHN F. DOHERTY, S.J.

INTRODUCTION

From 1977 through 1979, this author conducted a study of 453 companies in the Philippines. This study was completed in March 1980. Its purpose was threefold. First, to document the dominance of the new elite group of instant millionaires like Rodolfo Cuenca, Herminio Disini, Ricardo Silverio, Roberto Benedicto and the Romualdez brothers who came into prominence under the martial law regime of President Ferdinand Marcos. Second, to show the extent to which the Philippine economy had become a preserve of the Marcos-Romualdez families and their cronies. And finally, to indicate how multinational corporations thrive under authoritarian political systems.

Data for the study were gathered mostly from government sources such as circulars and policies issued by the Securities and Exchange Commission (SEC), the Central Bank (CB) of the Philippines, and the Development Bank of the Philippines (DBP). *Business Day*, and its *1000 Largest Corporations in the Philippines* as well as its files, and the *Economic Monitor* were also valuable sources of information. The libraries of the Asian Development Bank (ADB) and the Asian Institute of Management (AIM) were also consulted, as were the corporations' annual reports to their stockholders. Finally, the Manila daily press gave many valuable leads which when tracked down proved very helpful. Not all the sources cited above were equally cooperative. The SEC especially, though its data is public information, seemed to be more interested in insuring that its information was not made public.

Finally, numerous individuals provided valuable information through interviews. For security reasons, they will have to remain unidentified but it was heartening to realize that many in the business world today are not happy with developments in the Philippines under martial law.

The study was to have been published in June, 1980. However, while in press, sections of the manuscript disappeared and eventually found their way into the hands of the military. The author while in the United States eventually received a xeroxed copy of the galley proofs in which significant sections were missing. Due to developments over the past two years, the study needs to be updated. However, many of these developments could have been predicted from the study. The troubles of the Cuenca, Disini, and Silverio empires, and the collapse of Atrium and Bancom Investment Houses are cases in point.

This monograph presents a summary of the complete study. The 453 companies had 1,132 interlocking directorates with 32 government and commercial banks. The companies were also interlocked with one another. In addition, the study found 65 interlocks between commercial banks themselves. Of the Investment Houses active in 1980, all were controlled by one, two or at most three banks. The 27 largest Finance Companies and the 36 largest Insurance Companies were likewise dominated by the

banks. In 1980, all financial institutions in the Philippines were closely interlocked with one another in spite of Central Bank Circular 357 restricting interlocking directorates and officerships between financial institutions.[1]

Interestingly enough, the Circular excluded directors and officers with sizable investments in these firms. The policy clearly was not aimed at discouraging interlocks. This was evidenced by the fact that the Governor of the Central Bank himself, who issued it, was at the time a director of two private banks, and one, the largest Savings banks in the country, was owned by his family.[2]

I. INVESTMENT HOUSES

Investment Houses are really Merchant Banks which match money lenders and borrowers. Their primary objective is capital formation. They attract savings and convert them into the investment capital needed for economic development. The first Investment Houses began operating in the Philippines in 1959 but as of 1980 they had not achieved their basic purpose of encouraging corporations to promote public ownership of their shares. There are a number of reasons for this. First, there is in the Philippines a preference for short-term investments that can readily be converted into cash. Secondly, there is a reluctance on the part of controlling stockholders in a corporation to go public. Many corporations are family controlled and they want to ensure that absolute control remains where it is at present. Going public would often force them to retain stockholder confidence through their management ability and many are not willing to take that gamble. Thirdly, government policy is a factor. In government's support for industry, it allowed companies to be over-extended in their borrowings and foreign guarantees so that there is little pressure to raise funds by going public. Lastly, initial family investors often overprice capital equipment so that prospective investors find that their investments are diluted even before they are made.

Perhaps reflecting the reluctance of majority stockholders in the various corporations to go public is the fact that most Investment Houses are tied into one or two banks and banking groups. Though officers of commercial banks cannot be officers of an Investment House, directors of banks can be directors of Investment Houses and vice-versa and an officer of one may be a director of the other. Director-director as well as director-officer interlocks require prior approval of the Central Bank. However, this regulation of the Central Bank, while excluding the same individual from an officer-officer interlock, does not exclude groups of individuals functioning as a unit from sharing positions within the group. Nor does the Central Bank require prior approval for members of the same family to serve as directors or officers, one of an Investment House, the other of a bank. As of 1980, the 14 Investment Houses had 54 director interlocks with 19 of the 32 commercial banks included in this study or an average of 3.8 interlocks per Investment House.

II. FINANCING COMPANIES

Finance Companies have been set up mainly to help the distributors of motor vehicles, home appliances, and heavy equipment push their installment sales. The inability of commercial banks to provide customer credit has encouraged the growth of finance companies. As of March, 1980 over 300 Finance Companies were registered by the Security and Exchange Commission in Manila. The 29 largest Finance Companies are controlled by 12 commercial banks. These banks have at least 42 director interlocks with the 29 Finance Companies. This is an average of 1.4 interlocks per bank. This figure does not include more than one family member who serves as a director or officer of a Finance Company.

The total annual cost to the customer of financing a purchase through installments is between 24%-40% of the original value of the item purchased. If the buyer does not meet payments, the Finance Company can repossess the goods. In this case the distributor usually buys back the goods. This enables him to maintain the prices set and protect the brand name of the item.

In June 1976, Presidential Decree 1454 was signed. This decree empowered the Monetary Board to regulate and prescribe, in coordination with the Security and Exchange Commission, the maximum rates of fees, services and other charges being imposed by Finance Companies and to change such rates whenever conditions warrant it. The reason for the decree was that some Finance Companies were charging exorbitant rates of interest to their clients.

In 1977, after the decree went into effect, Finance Companies made an average of 17 centavos profit on every peso of capital. The Finance industry has been expanding quite rapidly, as has the scope of the industry. Finance Companies now handle not only installment buying but the entire field of trade and mass distribution of goods, transportation, construction, manufacturing and agriculture.

Since Finance Companies are heavily dependent on borrowing, their links with banks place them in a very favorable position regarding funds. The fact that most of the controlling local interests in the big Finance Companies are from the banking community and also among the top investors in business enterprises gives an indication of why they are able to be as big as they are. Quite simply, they have access to financing others do not have.

The fact that Finance Companies earn 17 centavos on every peso of capital invested means that for businessmen to finance their own operations is a very profitable investment indeed.

III. INSURANCE COMPANIES

The 36 largest Insurance Companies have 80 directors interlocking with 19 commercial banks. This is an average of 2.2 interlocks per company.

Insurance Companies are good sources of investable funds. They collect millions of pesos on premiums annually and the time lag between the collections and payments of claims to beneficiaries or insured groups is generally many years. In the meantime the money has to be invested. Life insurance alone had total investments of over 3 billion in 1978. Insurance companies may invest in any industry. They may also invest in real estate. The only restriction is that their investments in the bonds and other liabilities of any one company must be limited to 25% of total admitted assets of the insurance company. There are no restrictions on investing in family-owned companies.

The control of insurance companies by the same individuals and groups that control banks, investment houses and finance companies completes a circle. The commercial banks supplement their capital by forming or joining an Investment House group. This enables them to generate the capital to expand existing operations or to enter new ones. The Finance Companies, on the other hand, take care of the leasing and installment buying of necessary equipment and goods for companies controlled by the banking group. They also assist in distribution, transportation and production costs. The Insurance Companies, controlled by the banks, in turn, insure and reinsure these investments. All financial institutions are thus locked into one tight little circle.

IV. BANKING GROUPS

This part of the study found that ten banking groups dominated the economy of the Philippines. These groups are described below. The order reflects the number of companies controlled by each group and the total number of interlocks between the banking group and the various corporations.[3]

1. *The Rizal-China Banking Group* - The Rizal Commercial Banking Corporation (RCBC) and the China Bank (CB) are controlled by the Sycip-Yuchengco families. Yuchengco is a brother-in-law of the Sycips. Through a series of interlocking directorates, the Rizal and China banks are tied into the Philippine Bank of Communications (PBC) headed by Ralph Nubla, the Equitable Bank controlled by the Go family, the Pacific Bank controlled by the Roxas-Chua interests, and the International Corporate Bank headed by Ramon Orosa. This group is the principal local investor in Citycorp of the Philippines, an investment house. They control the Investment and Underwriting Corporation of the Philippines, Philippine Pacific Investments, State Investment House of Manphil Investment Corporation, all among the top 12 Philippine Investment Houses. They also control the Industrial Finance Corporation, Paramount Finance Corporation, Asia Pacific Finance Corporation and B.A. Finance, four of the top eight Finance companies. Insurance companies controlled by this group are First Nationwide, Bankers and Manufacturers, Malayan, Insurance Corporation of the Philippines, Rico General Insurance and Reliance Surety. The Rizal-China banking group has 209 director interlocks with 164 business corporations.

In the agribusiness sector, there are 20 interlocks with 16 corporations, namely, Granexport Manufacturing, a subsidiary of Cargill Industries, U.S. Menzi, Stanfilco and Dole-Philippines, fruit and vegetable corporations; Atlas Fertilizer; G.A. Machineries, Ekman and Company and International Harvester, agricultural and industrial machineries companies; RFM Corporation and Republic Consolidated, flour mills; Commonwealth Foods and Wander-Philippines, coffee and chocolate companies; Rustan's Commercial, a department store, and Rustan's Supermarket.

In construction and related industries, the RCBC-CB group is interlocked with Republic, Filipinas, Hi and Bacnotan Consolidated, the third, fifth, seventh and largest cement companies in the Philippines. Members of this group are the principal Philippine investors in Warner-Barnes Construction Supplies and Fuller Paints, American companies. They are among the principal investors in Kawasaki and Michimin Steel, Japanese corporations. They control Super-Industrial Steel and the Iron and Steel Products Corporation. The Sycip-Yuchengco families own the only company specializing in wood products, Zamboanga Wood Products. They have directors on the boards of Republic Glass, Maruichi Rubber and Plastics and the Goodyear Tire and Rubber Company. They also have director interlocks with the Far East Wire and Cable Company, Philippine Electrical and Philippine Appliance

Corporations, NCR-Philippines, Olympia International, Philippine Fuji-Xerox Corporation, Del Rosario Brothers Marketing and Polaris Marketing. The Rizal-China banking group is heavily involved in the communications industry. It has director interlocks with the Philippine Long Distance Telephone Company (PLDT) and the Philippine Communications Satellite. It holds principal local equity in Richardson-Merrill, a pharmaceutical company. It has controlling interest in Black Mountain Mining and in four large textile companies, Lakeview, Victorias, Riverside, and Mabuhay Textile. Members of the group also sit as directors of seven pulp and paper companies, Paper Industries Corporation of the Philippines (PICOP), Bataan Pulp and Paper, Steniel, Scott, Rustan Pulp and Paper, Rustan Manufacturing and Menzi Development. They also serve as directors of Columbia Tobaccos, GTE Industries, and Marcelo Fiberglass. Better known names in the Rizal-China banking group are: Sycip, Yuchengco, Dee, Dee-Sekiat, Chiong, Nubla, Dy-Buncio, Tantoco, Bapst[4], Siguion-Reyna (a relative of Defense Minister Juan Ponce Enrile), and Simeon Valdez (an uncle of President Marcos).

2. *The Far East Bank and Trust Company Group* (FEBTC). Its members have 161 director interlocks with 112 companies. They controlled the Bancom Development Corporation[5] and have at least five director links with the Private Development Corporation of the Philippines (PDCP). They are part owners of Paramount Finance Corporation and Blue Chip Financing and Investment. They control Manila Insurance, Beneficial Life, Philippine Fire and Marine Insurance, and Philanagan Insurance.

The FEBTC is heavily interlocked with 38 agribusiness corporations, among them Granexport Manufacturing, Blue Bar Philippines and Peter Paul Philippines, coconut oil and processing companies[6]; PASUDECO, Central Azucarera de San Pedro, Victorias Milling, Canlubang and Ma-ao Sugar Central, sugar mills; C.J. Yulo & Sons, a marketing company; AMS Farming, Hijo, Delta Farms, Twin Rivers, Davao Fruit and Menzi Agricultural, banana plantations; Chemical Industries and Maria Cristina Chemical Industries, agricultural chemical companies; Atlas Fertilizer; US Industries-Philippines, Asia Industries, Koppel, and Komatsu-Philippines, agricultural and industrial machineries companies; Pilsbury Mindanao Flour Mill; Atlas Farms, Purefoods and Universal Robina, meat and poultry companies; Commonwealth Foods, Filipro, and CFC, coffee and chocolate companies; the San Miguel Corporation; Wholesale Commodity and Exchange, Unimart and the Makati Supermarket, supermarkets and department stores.

In construction and related industries, the FEBTC group is interlocked with AG&P, Concrete Aggregates, and the Makati Development Corporation, construction companies; Bacnotan, Northern, Filipinas, and Republic, cement companies; Philippine Rock Products and Philippine Pre-stressed Concrete, concrete and asphalt companies; Sherwin-Williams Paints; Resins Inc., a resin and pigment company; Amon Trading and Industrial Products Manufacturing, construction supply companies; National Steel Corporation, Elizalde Steel, Rizal Integrated Steel, Anscor Container, steel and steel products companies; Wire Rope Corporation of the Philippines; Hooven-Comalco, an Australian based aluminum company; Davao Timber, Insular Lumber, and the Industrial Timber Corporation, logging and lumber companies; Republic Glass, Union Glass and Continer, and

Fil-Hispano Ceramics, glass and ceramics companies; B.F. Goodrich, Firestone Tire and Rubber, and Tagum Plastics, rubber and plastics companies; Dynetics Inc., Phelps-Dodge-Philippines and Far East Wire and Cable, electrical supply companies; General Electric Appliances, Precision Electronics, and Radiola-Toshiba-Philippines, electrical machinery and appliance companies; Del Rosario Bros. Marketing Corporation, NCR-Philippines, Philippine Duplicators, household appliances and office equipment companies; Philippine Carpet Manufacturing, Manila Cordage, and Philippine Carpet Manufacturing; Liberty Commodities, Soriamont Trading, HMC Marketing, and Industrial Products Corporation, general merchandising companies.

In the communications and service industries, members of the FEBTC group are interlocked with the Philippine Long Distance Telephone Company and Globe Mackay; Transport Contractor, a land transportation firm; Philippine Airlines; Getty Oil-Philippines; Hoechst-Phils., a pharmaceutical firm; Atlas Consolidated, Lepanto Consolidated, Vulcan Industrial Mineral and Western Minolco, mining companies; Philippine Synthetic Fiber Corporation, Lirog, Ramie, Synthetic, and Eastern, fiber and textile corporations. In transport equipment and automobile sales, they serve as directors of Asian Transmission, Canlubang Automotive, DMG-Inc, and Delta Industrial. They are directors of the Pulp and Paper Corporation of the Philippines (PICOP), United Pulp and Paper, and Menzi Development Corporation, pulp and paper companies; the Progressive Development Corporation and Monja Estates, real estate companies; and Far Eastern University in Manila. They have directors on the board of Philippine Hoteliers, owners of the Manila Mandarin, the Manila Peninsula, and the Manila Midtown Ramada hotels. Finally, they serve as directors of the A. Soriano Corporation and the Trans-Philippine Investment Corporation, business service companies.

Prominent names in the Far East Bank and Trust Company group are: Montinola, Barcelon, Soriano, Gokongwei, Yulo, J.B. Fernandez, Tuason, Quimson, Escaler, del Rosario, Palanca, S. Roxas, and Velayo.

3. *The Bank of the Philippine Islands Group:* This group has director interlocks with Banco de Oro and Monte de Piedad, savings banks. It controls the AEA Development Corporation and Ayala Investment, investment houses, and Makati Leasing and Finance, a finance company, as well as Insular Life, Filipinas Life, Philippine Guaranty, and FGU Insurance. It also has director interlocks with Fidelity and Surety, and National Life, insurance companies.

In the agribusiness sector, the BPI group owned Legaspi Oil and its subsidiary Cagayan de Oro oil until their takeover by UNICOM and the United Coconut Planters' Bank.[7] It also had substantial interest in Southern Island Oil and was interlocked with Granexport Manufacturing, all companies engaged in the production of coconut oil. The BPI group also has director interlocks with the Central Azucarera de San Pedro and Victorias Milling, sugar centrals. It controls Lapanday Fruit Company and has directors of Dole, Philippines. It has director interlocks with six chemical companies, Agricultural Chemical,

Chemical Products, Ault-Wiborg, Far East, LMG Chemical, Victorias Chemicals, and Shell Chemical, Philippines, as well as with Atlas Fertilizer; Makati Machinery, and G.A. Machineries, agricultural and industrial machineries companies; Pacific Flour Mill; Monterey Farms, Purefoods and Carnation. The group owns Ayala Molasses and have director interlocks with Far East Molasses.

In construction and related industries, the BPI group controls Makati Development and has director interlocks with the CDCP, EEI, Erectors and Tierra Development, all construction companies; Bacnotan Cement Company, Philippine Pre-stressed Concrete and Eternit Corporation, concrete, cement and asphalt companies, This group owns the National Lead Company and Ayala Construction and is the principal local investor in Georgia-Pacific International, the last two being construction supply companies. The BPI group has director interlocks with Reynolds Aluminum, B.F. Goodrich, and Firestone Tire and Rubber companies; Dynetics Inc., Beta Electrical Company, and Westinghouse Asia Controls, electrical supply companies; Del Rosario Bros. Marketing, NCR-Philippines, and U-Bix Corporation, household appliance and office equipment firms and Connell Brothers, a general merchandising firm.

In utilities and service industries, BPI group members sit as directors of Meralco Electric Company, Filipinas Shell and Shell Distribution; AMS-Philippines and Marsman Company, pharmaceutical firms; Benguet Consolidated, Acoje and Atlas Consolidated, mining firms; Ramcar Inc., a chemical products company; Ramie Textile; Paper Industries Corporation of the Philippines, United Pulp and Paper, and Columbia Carbon, paper and industrial carbon companies. They own the Ayala Corporation and Mermac, real estate companies. They are also the owners of Enjay Inc., the corporation that owns the Intercontinental and Manila Gardens hotels.

Prominent names in the BPI group are Zobel, Ayala, Villa-Abrille, Chuidian, Cinco, A. Araneta, Lorrayes, Padilla, J. de Leon, and Olmeda.

4. *The United Coconut Planters' Bank Group* (UCPB). This bank was incorporated in 1975 from the old First United Bank of the Cojuangcos and the Coconut Producers' Federation (COCOFED). The bank was intended to finance the new coconut monopoly. The President of the UCPB is Eduardo Cojuangco. Cojuangco also sits as a director of the Philippine Coconut Authority (PCA) and owns the biggest coconut seed plantation. An eight-year-old levy on coconut farmers, the Coconut Industry Development Fund (CIDF) is deposited in the UCPB without interest to be used to finance the planting of new hybrid seedlings. The seedlings are from Cojuangco's seednut farm. Since the CIDF was set up in 1974, collections are estimated to have totalled ₱ 1 billion a year for a total of ₱ 8 billion. The farmer who is forced to plant the new seedlings must spend ₱ 15,000. He can borrow this from the CIDF money and must pay between 8-10% interest. Thus the farmers who pay the levies which are the Coconut Industry Development Fund and receive no interest on their payments must pay 8-10% interest when they borrow back their own money. Meanwhile, the UCPB has done well with the coconut farmers money. Undivided profits, which were ₱ 14 million in 1975, were

₱ 213 million by 1980, moving the bank from 16th to 6th among the country's commercial banks.[8]

The UCPB is interlocked with the Central Bank of the Philippines, Veterans Bank, City Trust, Equitable Banking Corporation, Manila Banking Corporation, Philippine Manufacturers Bank, and the Rizal Commercial Banking Corporation. It is also interlocked with two savings banks, Banco de Oro and the Savings Bank of Manila, and with one finance and one insurance company, United Amherst Leasing and Finance and UCPB Insurance.

The UCPB has 109 interlocks with 81 corporations. At present it dominates the coconut industry through COCOFED, CIDF, and PCA. All 53 coconut mills in the Philippines are controlled by the United Coconut Authority (UNICOM) and the UCPB. The UCPB also has director interlocks with Unilever's Philippine Refining Corporation, a manufacturer of coconut-based soaps and other washing compounds. The Cojuangco family owns Central Azucarera de Tarlac, the second largest sugar mill in the Philippines. UCPB has directors on the board of Planters' Products Fertilizer; U.S. Industries-Philippines (USIPHIL) and Seacom, agricultural and industrial machineries companies; and BIOPHIL, a company producing seasonings.

In construction and related industries, the UCPB group has directors on the boards of Northern Cement and Pacific Products, a paint company. Minister Enrile, along with Cojuangco, controls the coconut industry and owns eight logging companies in the provinces of Bukidnon, Butuan, and Samar. The eight companies are Samar, Dolores Timber, San Jose Timber, Kasilangan, Softwood Development Corporation, Butuan, Palawan Apitong Corporation, and Ameco. The UCPB group also has directors on the board of Concepcion Industries, an electrical machinery company.

The UCPB has 13 director interlocks with three companies in the communications industry: Philippine Communications Satellite, Republic Telephone Company, and Philippine Long Distance Telephone Company. UCPB directors also sit as directors of PETROPHIL, the state-owned petroleum company. Eduardo Cojuangco owns Filsov Shipping and the Luzon Intercoast Shipping Company Inc. is owned by UNICOM. Minister Enrile owns two match companies, Pan Oriental and Eurasian. Directors of the UCPB also sit as directors of GTE Industries, which is engaged in the manufacture of telecommunications equipment. Cojuangco is also a director of the Manila Hilton Hotel and other UCPB directors serve as directors of the First Philippine Holding Corporation, the company set up to take over the Lopez interests after martial law was declared.[9]

Other names in the UCPB group in addition to Cojuangco and Enrile are Zayco, M. Domingo, de la Cuesta, Concepcion, Abello, Regala, R. Cruz, and Ongsiaco.

5. *The Manila Banking Corporation Group* (MBC). The Manila Banking Corporation has director interlocks with the Commercial Bank and Trust Company, Consolidated Bank, Security Bank, Philippine Trust,

and the China Banking Corporation. It is also interlocked with AEA Development Corporation, Citycorp Investment, and Philippine Investment Corporation, investment houses, and with Manila Bankers and Manila Insurance, insurance companies. Manila Banking has 83 interlocking directors with 84 corporations.

In the agribusiness sector, MBC has directors on the boards of Red V Coconut; Hijo and Twin Rivers, banana plantations; Agro-Industrial Development Company of Silay-Savaria, Bago-Medellin, and Talisay-Silay, sugar mills; USIPHIL and Seacom, agricultural and industrial machineries companies.

In construction and related industries, the MBC has director interlocks with Republic Cement; Philippine Pre-stressed Concrete and Eternit Corporation, manufacturers of concrete asphalt and asbestos products; Mabuhay Marketing, a construction supplies company; Elizalde Steel and International Pipe Industries, companies engaged in the production of basic metals; Nasipit and Philippine Wallboard, sawmills. Puyat and Sons, also a sawmill, is owned by the Puyat family of MBC. The MBC also has director interlocks with Republic Glass, Firestone Tire and Rubber, Mabuhay Vinyl Corporation, and Edward J. Nell and Company, Consolidated Mining Corporation; Floro and Crispa, textile companies; Negros Navigation, The Maritime Company of the Philippines, Madrigal Shipping; United Pulp and Paper; Philippine Explosives; Asian Engineering Corporation; and Loyola Life Plan and Group Developers, a real estate firm.

Prominent names in the MBC group are Puyat, Cabarrus, J.P. Fernandez, C. Ledesma, Madrigal, Olondriz, Tecson, M. Marquez, Jacinto, P. Lim, E. Tanco, and M. de Leon.

6. *The Philippine Commercial and Industrial Bank* (PCIB). This bank is heavily interlocked with the First Philippine Holdings Corporation, the corporation that was set up to assume control of Meralco securities when it was taken over from the Lopez family. There are a number of individuals whose names do not appear as connected with Philippine Holdings because they are represented by dummies. They are the Romualdezes, Disini, Velayo, and Cuenca, all closely identified with the Marcos regime.

The PCIB is also linked by director interlocks to Philippine Trust Company, a bank that seems to be controlled by the Romualdez interests, and to the Rizal Banking Corporation. It controls Citycorp Investment, Manphil Investment Corporation, and Philippine Commercial Investment, investment companies. It also controls The Industrial Corporation, a finance company, and has director interlocks with Philamlife, an insurance company. The PCIB has 73 director interlocks with 63 companies.

In the agribusiness sector, it is interlinked with Blue-Bar, Philippines and Food Industries of the Philippines, coconut products companies. It is also interlocked with Hijo, a banana plantation, and Liberty Flour Mill.

In construction and related industries, the PCIB has director interlocks with EEI and Ecco-Asia, construction companies. Ecco-Asia is headed by Emilio Abello, chairman of the board of the PCIB and also of Meralco. The First Philippine Holdings Corporation has controlling interest in Ecco-Asia. Ecco-Asia was charged in 1980 with a number of anomalies, among them, mismanagement of cost of work funds, unreasonable delay in the payment of vendors and suppliers of materials and equipment, and inefficiency in purchasing of materials and equipment. This was in connection with its contract with Westinghouse for building the nuclear power plant in Morong, Bataan.

PCIB directors also serve as directors of the National Steel Corporation and of Philippine Blooming Mills, steel and steel products companies; Mabuhay Vinyl; Stanford Microsystems; Philippine Electric Corporation; Radiowealth; and Philippine Carpet Manfacturers.

In the communications and service sectors, Benjamin Romualdez, the brother of the First Lady, owns the *Times Journal* and the *Manila Journal*. These publications, in turn, are interlocked with *The Bulletin Today*. The PCIB also has directors serving with the PLDT, Philippine Power Corporation, Meralco, and with Philippine Airlines. PCIB directors also sit as directors of Bristol Laboratories, Mead-Johnson and Richardson-Merrill, pharmaceutical companies; Chemtex Fibers, Gentex, Lakeview and Victorias Textile, textile companies, and with Supercar, an automotive sales company.

Alfredo Romualdez (another brother of the First Lady) of the PCIB group owns Manila Bay Enterprises which operated the floating casinos in Manila and Cebu and the stationary casinos in the Insular Hotel in Davao and the Pines Hotel in Baguio. Romualdez also controls Jai Alai Amusement Corporation, taken over from the Madrigals after martial law was declared.

Prominent names in the PCIB group besides those mentioned above as represented by dummies are Abello, Ozaeta, Ongpin, Ongsiako, Ching, Zalamea, Martel, and Floirendo, One of the Martels is married to a sister of Imelda Marcos, and Floirendo the unofficial czar of the banana industry, and is closely linked to the President and many members of the PCIB group.

7. *Filipinas Manufacturers Bank (Filmanbank) Group:* This bank is linked to the Associated Citizens Bank, Metropolitan Bank, Traders Royal Bank, and the Republic Planters' Bank. It also has director interlocks with the Philippine Savings Bank and Manphil Investment. It also interlocks with Cardinal Life Insurance, Midland Life Insurance, Standard Insurance, Sterling Life Insurance, and Worldwide Insurance and Surety.

Filmanbank has 71 director interlocks with 55 corporations. In the agribusiness sector, it is linked to the Bukidnon Sugar Company (BUSCO); Maria Cristina Chemical Industries, an agricultural and industrial chemical company; Tierra Factors, Delta Heavy Machinery

and Komatsu-Philippine, agricultural and industrial heavy machinery companies; RFM Corporation and Republic Consolidated flour mills; Philippine Fermentation Industrial and Union Chemicals, seasoning companies.

In construction and related industries, Filmanbank bank has interlocking directors with CDCP (Cuenca, the head of the CDCP, is a director of Filmanbank), Tierra Development, Hydro Resources, and Associated General Builders, construction companies; Philippine Pigments and Resins, a paint company; Mariwasa Manufacturing, a company manufacturing structural clay products; Delta International and Daikin-Philippines, Japanese companies producing electrical machinery and appliance; Systems and Business Equipment Corporation, an office equipment company; and Polaris Manufacturing, a general merchandising company.

In the utilities and service industries, Silverio, chairman of the board of Filmanbank, owns three airline companies: Astro Air Service and Delta Air, freight carriers, and Air Manila International, a charter airline. The Filmanbank group has director interlocks with Crispa, a textile manufacturing company; Delta Motors and Mariwasa-Honda, automotive vehicle companies. These companies are joint ventures between the Silverios and the parent Japanese companies.[10] Filmanbank bank is also interlocked with United Philippine Lines, a shipping company, and with the Bataan Shipyard and Engineering Company (BASECO), as well as with the new Bataan-based Shipbuilding and Engineering Company, a joint venture between the Philippine Government and Kawasaki Heavy Industries of Japan. However, the real owner of the Shipbuilding and Engineering Company is Benjamin Romualdez. R. Tanseco, president of United Philippine Lines and czar of the Philippine shipping industry, has substantial investments in both BASECO and the shipbuilding company. Finally, the Filmanbank group is interlocked with the Resort Hotels Corporation.

Prominent names in this group are Silverio, Cuenca, R. Tanseco, Africa, H.R. Lopez, Tengco, and Ty.

8. *The Republic Planters' Bank (RPB) and The Traders Royal Bank (TRB) Groups*. These banks are locked into each other through the family of Roberto Benedicto. They are also interlocked with the Filmanbank through the Africas and with Pacific Bank through Jose Uson. The RPB-TRP group is also interlocked with the Philippine Savings Bank which in turn is linked to the International Corporate Bank and to the Insular Bank of Asia and America. Other links of the RPB-TRB group include Silangan Investments and Fortune and Metropolitan Insurance companies.

The RPB is the bank of the sugar industry. Roberto Benedicto of the RPB is head of PHILSUCOM, the government's only sugar trader, and the czar of the sugar industry. Benedicto and Africa and Cuenca were the prime movers behind the Bukidnon Sugar Company (BUSCO). While Ambassador to Japan, Benedicto negotiated a contract with the Marubeni Corporation for the mill. Fifty percent of the funding of

BUSCO comes from the Export-Import Bank. This funding was negotiated by Silangan Investment and Managers, which is also headed by Benedicto. Silangan also participated in the capitalization of BUSCO by buying 51,000 shares of common stock valued at $100 per share. The principal contractor for BUSCO was the CDCP, headed by Rudolfo Cuenca.

The RPB also has director interlocks with the *Central de Azucarera de La Carlota*. The Elizaldes who own *La Carlota* are on the board of the RPB.

The RPB-TRB also has the same directors with Planters' Products fertilizer, Koppel Agricultural and Industrial Machineries, Asia Industries, General Power and Diesel, Commonwealth Foods, Universal Molasses, Tanduay, and Elizalde International. The last two companies are also owned by the Elizaldes.

In the communications and service areas, Roberto Benedicto is also the unofficial czar of the television industry. He heads the Kanlaon Broadcasting System (KBS) and the Banahaw Broadcasting System (BBS). KBS controls 15 radio stations and two television channels. It also has the only full-time television channel in the country and manages half of the television channels nationwide. Benedicto also controls Eastern Communications. Jose Africa is a director of the PLDT.

The RPB-TRB group also has director interlocks with Meralco, Mobil Oil-Philippines, and Pharma Pharmaceutical. The Elizaldes sit on the boards of Marcopper and Placer Development LTD., mining companies. Cuenca owns Galleon Shipping while Benedicto owns Northern Lines.

The RPB-TRB group has overlapping directors with the Hotel Enterprises Corporation, owner of the Hyatt Regency, and with Elizalde and Company, a business services company.

The TRB locks in with the CDCP, Philippine Pigments and Resins, Ines Plywood, and Sta. Ines Melele, sawmills. Likewise, the RPB has interlocks with Elizalde Paints and Oils, Universal Cement, Amon Trading, National Steel, Elizalde Steel, and Elizalde Rope.

Prominent names in the RPB-TRB group are Benedicto, Africa, Cuenca, Elizalde, and Pacifico Marcos, brother of the President and the unofficial czar of the pharmaceutical industry.

9. *The Insular Bank of Asia and America (IBAA) Group :* The IBAA is linked to the International Corporate Bank and to Philippine Trust through the Alcantaras. Gotianum, with controlling interest in the IBAA, also owns Family Savings Bank. The IBAA is interlocked with Filinvest and the Commercial Credit Corporation, finance companies, and with CCC Insurance, FGU Insurance, Worldwide Insurance Society, Worldwide Insurance and Rizal Surety.

The IBAA has 47 director interlocks with 40 corporations.

In the agribusiness sector, the IBAA shares interlocking directors with United Cane Manufacturing, Lapanday Banana Plantation, Southern Island Oil Mill, Cummins Diesel Sales, Gould Pumps, Liberty Flour, Pillsbury-Mindanao Flour, Pepsi-Cola Bottling Plant, and Shoemart.

In construction and related sectors, the same directors run IBAA, I.M. Camus Engineering, Bacnotan, Hi and Iligan cement companies; Fuller Paints, C.A. Alcantara & Sons, Paramount Vinyl Products, Far East Wire and Cable, and Ever Electrical.

The Aboitizes of the IBAA own Davao Light and Power, Cebu Oxygen and Acetylene and National Industrial Gasses, Aboitiz Shipping, Sea Transport, and the Cebu Shipyard and Engineering Company. They have director interlocks with Texifiber Corporation and Universal Mills, textile companies; Wyeth-Suaco Pharmaceuticals, and with Filinvest Land Inc., a real estate firm.

Prominent names in the IBAA group are Aboitiz, Gotianum, Alcantara, Go, and E. Lopez.

10. *Philippine Banking Corporation (PBC) Group:* The PBC has director interlocks with the Philippine Commercial and Industrial Bank (PCIB), and with Security Bank and Trust Company (SBTC). It also has ties with the Family Savings Bank and with three investment houses: AEA Development Corporation, Investment and Development Corporation, and Filinvest. It controls Vista Insurance and Central Surety.

PBC has 47 director interlocks with 38 corporations.

In the agribusiness sector, the PBC is interlinked with Davao Gulf Oil, a coconut oil firm; Twin Rivers and Tagum Agricultural Development Company (TADECO), banana plantations. Antonio Floirendo, the unofficial czar of the banana industry, owns TADECO, which occupies 5,000 hectares of the Davao Penal Colony land. The company employs 1,500 prisoners who do the most difficult work on the plantation, often working from 5 a.m. till 11 p.m. for a salary of ₱ 1.65 per day (20 U.S. cents). TADECO is a grower for United Brands, the old United Fruit Company. The PBC is also interlocked with Shell Chemical, Carnation, Commonwealth Foods, San Miguel, and Frabelle Fishing.

In construction and related industries, the PBC has director interlocks with Continental Cement, Supreme Aggregates and Philippine Pre-stressed Concrete, cement and asphalt firms; Industrial Products Marketing and Warner-Barnes-Philippines, construction supply companies; Wire Rope Corporation of the Philippines; Firestone Tire and Rubber; Del Rosario Bros. Marketing and Industrial Products Marketing; Bayer-Philippines; Philippine Tobacco, Flu Curing and Drying; Columbia Carbon; The Ayala Corporation; and Trans-Philippine Investment, a company engaged in business services.

Prominent names in this group are Laurel, Ortigas, Lagdameo, Castañeda, and Buenaventura.

V. ANALYSIS OF DATA

At this point, one can ask the question "what do all these findings mean? The following sections will attempt to extract and analyze the major points that can be inferred from this research.

Foreign Influence and Concentration of Wealth

Most of the sectors of the economy mentioned in this study are dominated by foreign firms, mostly American and Japanese. The Philippine Banking Groups listed above provide a good part of the capital of such firms. They thus gain equity in the venture. Depending on the arrangements, local entrepreneurs also serve as buffers for foreign firms when criticism arises about foreign domination of the economy. They also smooth the way for the foreign firms in their dealings with the Philippine government bureaucracy by providing them with local political clout in getting around government regulations, handling labor relations, getting land, and encouraging government agencies to provide whatever infrastructure may be needed.

Areas listed above largely controlled by foreign companies and the names of the companies are listed below.*

1. *Agricultural Sector:*
   a. *Coconut products:* Unilever (BR), Proctor & Gamble (AM), Colgate-Palmolive (AM), Franklin Baker (AM), S.C. Johnson (AM).

   b. *Sugar:* Amstar (AM), Roxas y Cia (SP), Tabacalera Industrial Corporation (SP), Jardine-Matheson (BR, HK), Castle and Cooke (AM).

   c. *Bananas and Pineapples:* Castle and Cooke's Dole (AM), Del Monte (AM), United Brands (AM), Sumitomo (JAP), and Japanese Trading Companies.

   d. *Agricultural Chemicals:* Ault-Wiborg (AM), Cynamid (AM), Shell (BR-DUT), Borden (AM), Union Carbide (AM).

   e. *Agricultural and Industrial Machinery:* International Harvester (AM), Goulds Pumps (AM), Koppel (AM), Cummins Diesel (AM), Komatsu (JAP), Sumitomo (JAP), Ekman (GMN), Jardine-Matheson (BR-HK).

   f. *Flour Milling:* Roland Lund (AM), Pilsbury (AM), Parsons and Grim (AM).

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* Abbreviations: AM (American), AUS (Austrian), AUST (Australian), BR (British), CAN (Canadian), DUT (Dutch), GMN (German), HK (Hong Kong), ITAL (Italy), JAP (Japanese), SP (Spanish), SW (Swiss), TH (Thai).

g. *Meat and Meat Products:* California Manufacturing Corporation (AM), Hormel (AM), Refining Associates of Canada (CAN).

h. *Poultry:* Lloyd's Industries (AM), California Mfg. Corp. (AM).

i. *Milk Products:* Carnation (AUST), Kraft (AM).

j. *Coffee and Chocolate:* Nestle (SW), Gloro Ltd. (BR), General Foods (AM).

k. *Seasonings:* Ajinomoto (JAP), Kanegafuchi (JAP), Takeda (JAP), Mitsui (JAP), International Flavors (AM).

l. *Softdrinks:* Coca-Cola (AM), Pepsi-Cola (AM).

m. *Molasses:* Pepsi-Cola (AM).

2. *Construction and Related Industries*

a. *Construction:* Atlantic Gulf & Pacific (AM), Mitsubishi (JAP).

b. *Paints and Resins:* Jardine-Davies (BR), Reichold Chemicals (AM), Fuller (AM), National Lead Company (AM).

c. *Construction Supplies:* Georgia-Pacific (AM), Jardine-Davies (BR), Mitsubishi (JAP), Warner-Barnes (AM).

d. *Iron, Steel and Non-Ferrous Metals:* Hooven-Comalco (AUST), Reynolds Aluminum (AM), Kawasaki (JAP), Mitsui (JAP), Nippon Steel (JAP), Sanwa (JAP), Michimen (JAP), Kanematsu (JAP), Nippondenso (JAP).

e. *Logging and Sawmills:* Wood Products (AM), Pacific Wood Products (AM), Boise-Cascade (AM), M. Mears (AM), GEC (BR), American International Hardwood (AM).

f. *Glass and Clay Products:* Gervil (AM), Noritake Co. Ltd. (JAP), Union Glass (AM), Mariwasa Mfg. (JAP).

g. *Rubber and Plastics:* Firestone (AM), B.F. Goodrich (AM), Goodyear (AM), Maruichi (JAP).

h. *Electrical Machinery and Supplies:* Toyo Electronics (JAP), Rockwell International (AM), Nippon (JAP), Precision Circuits (AM), Raytheon (AM), Sprague Electric (AM), Signetics (AM), M.V. Philips (DUT), Silicon (AM).

i. *Electrical Equipment:* Motorola (AM), ITT (AM), Timex (AM), Hughes Micro Components (AM), Westinghouse (AM),

Showa (JAP), Jardine-Davies (BR), General Electric (AM), Matsushita (JAP), Tokyo-Shibaura (JAP), Daikin-Kagyo (JAP), Singer (AM).

j. *Household Appliances:* IBM (AM), U-Bix (AM), NCR Corp. (AM), Olympia (ITAL), Fuji-Xerox (JAP).

k. *Rope, Twine, Carpets, Thread:* J.P. Coates (BR), Tubbs (AM), Hongkong Mfg. Ltd. (HK).

l. *Other:* L & A Water Conditioning (AM), Wilbur Ellis Co. Ltd. (BR), Kerr & Co. (AM).

3. *Communications, Services, and Related Industries:*

a. *Communications:* American Cable & Radio (AM), ITT (AM), Globe-Mackay (AM), RCA Global Communications (AM), U.S. Military.

b. *Petroleum Products:* Caltex (AM), Getty (AM), Shell (DUT), Gulf Oil Corp. (AM).

c. *Pharmaceuticals:* American Hospital Supply (AM), Wyeth Laboratories (AM), Warren-Lambert (AM), Winthrop-Steams (AM), Mead-Johnson(AM), Pfizer Corp (AM), Richardson-Merrill (AM), Sterling Drug Inc. (AM), Hoechst (GMN), Dummermath (GMN), Roche Pharmaceuticals (AM), UpJohn (AM), Hi-Esai (JAP).

d. *Mining:* American Smelting and Mining (AM), Shipside Inc. (AM), Marubeni Corp. (JAP), Mitsui Mining and Smelting (JAP), Nippon Mining (JAP), Kawasaki Steel (JAP), Placer Dev. Ltd. (BR), Sherret, Gordon Mines Ltd. (BR), Fuyo (JAP), Voest-Alpine A.G. (AUS); also various smaller British, German, Spanish, and Republic of China interests.

e. *Chemical-based Products:* Tussing & Butler (AM), National Industrial Gasses (AM).

f. *Textiles, Garment Mfg., Man-made Fibers:* Mitsubishi (JAP), Toshin Shoji Ltd. (JAP), Riverside (AM), Levi-Strauss (AM), Gelmart Industries (AM), Philippine Apparel (AM), Triumph International GMN), Aris Glove Factory (AM), Marubeni (JAP), Toyo Kaisha Ltd. (JAP), Teijin (JAP), David Males & Co. Inc. (AM); and Chinese interests from Hong Kong and Taiwan.

g. *Motor Vehicle Manufacturing and Sales:* Ford (AM), General Motors (AM), Chrysler Corp (AM), Isuzu Motors Ltd. (JAP), Honda (JAP), Toyota (JAP), Mitsubishi (JAP).

h. *Shipping:* Kai San Steamship Co. (JAP), Paribas Asia

Ltd. (HK), The Bank of China (HK), Sea Land (AM), Kawasaki Heavy Industries (JAP), Sanwa (JAP), Fuyo (JAP).

i. *Pulp, Paper and Paper Products:* Boise-Cascade Corporation (AM), International Paper Company (AM), A.M. Macleod (AM), J.P. Heilbrunner (AM), Steniel (AM), Scott Paper Company (AM), Kimberly Clark (AM), Kawsek (AM).

j. *Tobacco and Matches:* Baumgartner Papiers (SW), Cigfil (TH), Svenska Toendstecks (SW); and British and Taiwanese interests in La Suerte.

k. *Miscellaneous Manufacturing:* International Chemicals (AM), Industrial Carbon (AM), Mitsui (JAP), Sanwa (JAP), Hilton Hotels Corp. (AM), Hokodate Dock Co. (JAP), Sheraton Hotels Corporation (AM); and real estate and hotel companies.

As cited earlier, the great majority of the firms are owned and controlled by American and Japanese interests. There is also a great concentration of wealth in a few companies. Of the 32 sectors listed above, 30 or 98% of them are concentrated sectors, so-called because only four or fewer companies control 35% of total sales. Among other things, this means there is little or no competition. In most of the areas above, foreign corporations keep a low profile. Legally, the corporations are considered Philippine Corporations but the foreign companies control the technology and though their capital outlays may be limited, they are vital to investment house efforts to put together attractive investment packages.

Regarding increasing concentration of wealth in a few sectors, about 81 families spread through 10 banking groups are identified as controlling the Philippine economy (discussed further below). This study did not go in depth into their links with foreign multinational corporations but it is obvious that these links exist to their mutual advantage.

Profitability Ratios

The profitability ratio indicates what is considered to be a reasonable return on investment. Anything beyond 5%-9% is considered excessive and represents excessive concentration in the industry.[11] By sectors the average profitability ratios for the companies included in this study are given below. (Percentages have been rounded off.)

Sectors	*Profitability Ratio*
Coconut Products	111%
Shipping, Shipbuilding and Brokerage	30%
Life Plans	28%

Industrial Carbon	25%
Communications Companies and The Press	24%
Construction Companies	24%
Fruits	22%
Agricultural and Industrial Chemicals	22%
Casinos, Jai Alai	22%
Microsystems and Electrical Lamps	19%
Drugs and Pharmaceuticals	19%
Explosives	18%
Glass and Clay Products	17%
Coconut Oil	15%
Supermarkets and Department Stores	15%
Rubber and Plastics	15%
Agricultural and Industrial Heavy Equipment	14%
Cement Companies	13%
Motor Vehicle: Equipment Manufacturing and Sales	13%
Real Estate Companies	13%
Management Services	13%
Meat and Poultry	13%
Sugar Milling	12%
Fishing Companies	12%
Bookstores	12%
Electrical Supplies	12%
Electrical Machinery	12%
Household Appliances and Office Equipment	12%
Land Transportation Companies	12%
Flour Milling	10%
Paints and Resins	10%
Construction Supplies	10%
Chemical Based Products	10%
Pulp and Paper	10%
Food Companies	10%
Concrete Companies	9%
Petroleum Companies	9%*
Rope, Twine, Net and Carpets	9%

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* This figure for the oil companies is a bit hard to believe given the fact that in December, 1979, the time this study was being done, *Time* announced that third-quarter profits for Exxon, Mobil, Texaco and Socal were anywhere from 73%-211%.

Marketing Companies	8%
Power Companies	8%
Steel Companies	7%
Textiles	6%
Logging, Sawmills, Wood Products	5%
Tobacco and Matches	5%
Mining	5%
Airlines	**
Hotels	***

Of the 453 companies included in the sectors above, only 104 or 23% of them fall below the 5% profitability ratio. On the other hand, 164 companies or 36% have profitability ratios of 20% or above. The rest range between 10% and 19%. Profitability ratios above 5% - 9% indicate in addition to excessive concentration that the companies are not competitive.

Lack of Competition in Business

The fact that companies in the various sectors and across sectors are interlocked with one another emphasizes further the non-competitive nature of Philippine business. There is significant vertical and horizontal integration between interrelated industries. By this we mean that a product is controlled from its source to its ultimate sale. Thus, those controlling construction companies control cement and concrete companies, steel companies, glass and paint companies, electrical supply companies, furniture companies, etc. Agribusiness companies try to control the production of raw farm products from the field all the way to the sale of the product in the market. Thus, the same individuals control the farms, mills, food processing plants, fertilizer factories, agricultural heavy equipment companies, and agricultural chemical companies, as well as the wholesale and retail outlets selling the product and the advertising agencies which induce people to buy it.

Another significant factor related to the concentration of Philippine business in the hands of 81 families in ten banking groups is the fact that only 6% of all Philippine corporations have their shares listed on any stock exchange. This means that they have not gone public despite the incentives offered by the Securities and Exchange Commission to go public. There are a number of reasons why corporations have no desire to go public. One is the enthusiastic support the government gives to the industries by allowing companies to be

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** No data given

*** No figure given. Money for the new hotels was borrowed from the government, the SSS, GSIS and other financing institutions at 12%-14% interest with a two-year grace period. Entrepreneurs overstated the amount needed and then invested the money in high-yield, quick-return investments. Even if the hotels proved unprofitable, the entrepreneurs would have made healthy profits.

overleveraged via their lending and foreign guarantees. The result is that the entrepreneurs do not feel the pressure to raise funding equity from the public. Secondly, many of the controlling stockholders and owners of the corporations do not want to gamble on stockholder confidence in their management ability if they go public.[12]

The concentration of ownership and control of commercial and industrial enterprises in the hands of a few means that the profits from such enterprises also remain in the hands of the favored few. Yet, the equitable distribution of economic power and wealth is essential to a just and healthy society. It is not unreasonable to state that the conspicuous consumption found among the wealthy in Philippine society is an upshot of the same mentality that sees the economic system and the rewards it brings as their preserve alone. They argue that as the investment is theirs, so is the profit and they can dispose of it as they wish. Any talk of social responsibility or responsible management of investments is treated with disdain.

The government has to take its share of the blame for this situation. There have been no serious attempts at imposing any real tax reforms that would put the excessive profits of private individuals to productive use. All laws, tax laws and other, are manipulated for their benefit. Furthermore, government places itself at the service of the entrepreneurs by shouldering the costs of their infrastructure requirements, granting tax exemptions, issuing loans on very favorable terms, and providing other incentives, including looking the other way when industry engages in destructive practices. All of this only serves to increase industry's lack of responsibility and its exploitative nature.

Production Geared Toward Exports

The export orientation of current corporate ventures in the Philippines is highly evident. One wonders how it is in the public interest to orient the production goods sector to export or to the consumer needs of the higher income groups in the society. This orientation requires massive investments in foreign technology and large amounts of local and foreign capital, either supplied by or generated through multinational corporations. The problems with this approach are basically three.

First, there is no production goods sector to meet the needs of the majority of the people. This means that their needs for consumer goods are not met at all or are met only through borrowing at usurious rates of interest.

The second problem with the export-oriented policy of the government is that appropriate forms of locally developed technology do not develop. Technology is geared to the export-oriented needs of the agribusiness and industrial corporations and not to the needs of small farmers and entrepreneurs.

The third problem is that the orientation of the privileged

classes is towards the standards of the Western industrialized countries. But it is an orientation with a vengeance. Millions of scarce dollars are spent on conspicuous consumption and display that only serve to emphasize the gap between the few that are wealthy and the vast majority that are poor. Here reference might be made to the 12 luxury hotels, the grand theatre, the Cultural Center, the Philippine International Convention Center, and the "Showcase" projects of the First Lady. In effect, the privileged class seems to feel that in a country where 80% of the population live below poverty levels, they have a right to squander resources to satisfy their most trivial needs. Though they profess to be Christian, most do not seem to heed the obligation stated by Pope John XXIII to measure what is superflous by the needs of others.[13]

Because of the strong emphasis on exports and their attendant dislocations in the country at large, we find in almost every sector of the economy at present several modes of production existing side by side. We have large foreign and local agribusiness corporations existing alongside of small independently-owned farms and farms run by tenants. We also find a growing number of landless agricultural laborers who are unemployed or underemployed. There is a large export-oriented sector of industry existing side by side with small groups that produce for local market and subsist on small margins of capital. There is a badly depressed labor force side by side with wealthy entrepreneurs given to conspicuous consumption. All of this means that instead of an economy developing toward homogeneity, there is increasing heterogeneity as the rich literally get richer and the poor, poorer.

Martial Law and the "Rationalization" of Industry

Even more destructive is the fact that, since martial law was declared, the military has been used to repress the agricultural and industrial labor force, to evict settlers and tribal groups from their lands, and in general, to intimidate those who have very legitimate grievances to express. Much use too has been made by the government of the term "rationalization" of industry. No matter how described, "rationalization" has meant little more than greater monopolization for the benefit of the favored few. This is seen in the coconut industry "rationalized" under UNICOM for the benefit of Enrile and Cojuangco; in the sugar industry "rationalized" under PHILSUCOM for the benefit of Benedicto, Cuenca, Africa, and the mother of the President; in the petroleum industry "rationalized" under Geronimo Velasco for the benefit of Velasco and the Marcos and Romualdez families; in the logging and wood-processing industries "rationalized" under the control of Yuchengco for the benefit of Yuchengco, Enrile and the Marcoses; in the shipping industry "rationalized" under Tanseco for the benefit of Tenseco and the Romualdez and Marcos interests; in the construction industry "rationalized" under Cuenca for the First Lady's building projects; and in the meat industry about to be "rationalized." If the trend continues, it is not unlikely that in time the whole country and everything in it will be owned by the Marcos-Romualdez families and the few individuals on whom they cast their smile.

Some More Equal Than Others

Not all 81 individuals listed in this study are equally favored by the Marcos-Romualdez administration. This is seen in the fact that since martial law, certain individuals have expanded their corporate empires at a fantastic rate, while the empires of others have either remained stationary or contracted. We have been able to divide the 81 individuals into three groups.[14]

The first group includes the Marcoses and Romualdezes themselves, the Martels and Disini (their in-laws), Velayo, Benedicto, Enrile, Cuenca, Silverio, Abello, Tanseco, Tantoco, Ozaeta, Oreta, and Floirendo. The rise to power of this group seems to be related to their connections with the First Couple. Before martial law, few, if any of them were well known and none of them were among the traditional elite. Most accumulated their fortunes under martial law.

The second group, also favored by the administration, comes from the ranks of the pre-martial law elite. The business interests of this group have also grown significantly since martial law was declared, though they had substantial resources to begin with. This group includes the Sycip-Yuchengco family, the Yulos, Elizaldes, Aboitizes, Alcantaras, J.B. Fernandez, Nubla, Palanca, Concepcion, and Siguion-Reyna.

The third group, like the second, is part of the pre-martial law elite. However, this group is not clearly and strongly identified with the First Family. They are not in the inner circle, so to speak. They have managed to hold their own under martial law but they have to endure periodic harassments and threats to their business interests. They appear to go along, to keep the semblance of loyalty, because if they do not, they realize they could go the way of the Lopezes, Jacintos, and Todas who lost their empires. This group would include the Zobel-Ayala family, the Sorianos, Madrigals, Olondrizes, Ortigas, Laurels, and the sugar bloc in general. Perhaps this segment of the old elite is too powerful for the Marcos regime to take on directly, but periodic harassments manage to keep them loyal on the surface at least.

VI. CONCLUSIONS

Two objections may be raised against a study of interlocking directorates such as this. The first is that interlocking directorates do not, of themselves, prove collusion. It is argued that two people can sit on the board of directors of a bank and a number of corporations and have different outlooks, interests, and approaches. The second objection which may be raised is that the number of competently trained people is limited. Therefore, they have to assume many positions they would not be asked to assume were their numbers greater.

In answer to the first objection, the real question is, whose best interests are served by interlocking directorates? The very presence of such interlocks is a threat to the public interest. To protect the public against the evils of collusion, the law recognizes that even the possibility of such collusion is not in the public interest. This research has established the existence of interlocking directorates which are prejudicial to the public interest. We have seen that numerous companies within the same industry and related industries are linked through numerous interlocks and that 98% of these sectors are concentrated sectors with only four or fewer companies controlling 35% of the total sales within each sector. We have also seen that 23% of the 453 companies studied had profitability ratios of less than 5%, which means that the great majority are making huge profits. All this should tell us that corporations certainly do not operate with the interest of the public in mind. Going public must be the first step in showing some responsibility to the general public.

The second argument on the lack of adequately trained personnel might have some validity were it not for the statement cited earlier that one reason corporations are not interested in going public is that they do not want to gamble on retaining stockholder confidence in their management ability. This statement would imply that it is not the adequately trained personnel that are spreading their talents thin but rather the incompetents.[15]

Traditional arguments in favor of big corporations, whatever their validity elsewhere, do not apply in the Philippines at present. On the contrary, many of the objections to huge corporations are proved valid on the Philippine scene. For example, businessmen react against the charge that corporate bigness can be translated into political power. To some extent this may be true as evidenced by the second group of traditional elite favored by the government. It is also true that in the Philippines under martial law, political power has been translated into corporate bigness as shown by the group that has come to power since martial law. A businessman who does not go along with those in power, no matter how grudgingly he complies, will soon find himself without foreign exchange, import licenses, and government assistance of any kind, and will find himself harassed in countless ways. Under martial law, an argument can be made for the fact that it is not the competent people who are succeeding but quite the opposite.

At times the argument is made that large corporations have advantages of scale and efficiency over smaller ones. But there would seem to be limits to both size and spread if large corporations were to be more efficient. The present problems of the Disini, the Silverio, and the Cuenca conglomerates would seem to document that.[16] Furthermore, the larger a corporation becomes, the less responsive it is to the public. Certainly where 81 individuals control 453 corporations all interlocked with one another and favored by the government, it is extremely difficult to see how the interests of public are taken into account and protected.

Entrepreneurs could manifest public concern in many ways. One already mentioned would be to go public by listing their shares on the stock markets. Another would be in their attitudes to labor. Rather than seeing labor as a cost of production to be manipulated, exploited, and paid as little as possible, they might begin to see labor as a partner in the enterprise. Profits could be trimmed to reasonable levels and prices kept within bounds. Finally, kickbacks, influence peddling, padded contracts, and phony bidding that enrich the corporate elite at the expense of the consumer could be done away with in the public interest. Ecco-Asia referred to in this study is a case in point.[17]

Some serious moral questions also arise as a result of this study. They touch on the rights and responsibilities of the ownership of productive goods, consumption patterns, just profits, profit sharing, just wages, the rights of labor and of agricultural workers, the concentration of economic and political power in the hands of a few people and exercised for their benefit alone, the depersonalization and dehumanization of individuals, the right of people to participate in decisions that affect their lives, and the demands of the common good, among others.

This study did not go into the role of the technocrats in the current regime but mention must be made about them in this concluding note. It was commonplace in the early years of martial law to say that the technocrats, not the politicians, were now in control. The fact is, they were not, but if they were, it was unfortunate since the economic, social and political life of the country is too important to be left to technocrats alone. They offer too simplistic a vision of reality in which people are merely another factor in production. Their orientation toward planning and economic growth tends to favor the already favored few and fails to address the legitimate needs of ordinary people in the country.

Finally, this study raises the larger issue of economic and social inequality in Philippine society. There has been no real effort to equalize wealth through an honest and serious land reform program.[18] As mentioned above, the gains of economic growth have gone to the favored few who are in the best position to profit from such gains initially. Initial distribution of income is an important determinant of the trend in inequality. People with assets are in the best position to profit once growth begins. There is simply no

trickle-down effect once growth takes off. Evidence suggests that the most powerful determinant in income distribution is the underlying structure of the economy. Once growth is taking place, wealth is not redistributed through marginal instruments such as taxation and public employment.[19] It is interesting to recall that both the People's Republic of China and Republic of China (Taiwan) instituted serious land reform programs before embarking on industrialization.[20]

The question of inequality in turn raises the issue of ideology and again, this is one area the research did not get into. It is hoped that this study would generate further interest in that direction. It is, of course, evident that corporate capitalism reinforces and perpetuates the maldistribution of wealth and resources earlier mentioned. However, this is not to say that a better distribution of wealth could result from a socialist system. The fact is that we can find countries that have adopted the capitalist option in which there is a relatively equitable distribution of wealth, just as we can find countries that have opted for socialism in which the same thing is true. On the other hand, we find both capitalist and socialist countries in which there is significant economic growth but wealth is poorly distributed. It would seem then that a better distribution of wealth requires more than ideology, although this is, of course, an important consideration.

Realities in the Philippine situation have to be faced and some drastic decisions and fundamental changes made that do not allow the kind of interlocking wealth and inequality described in this study. Overcentralization and concentration of power perpetuate the kind of system where the few enrich themselves and the vast majority fall deeper into poverty. Decisions are always made at the top, leaving no room for initiatives at other, lesser levels. The heavy hand of centralization dictates even the day-to-day implementation of governmental decisions, which should be done by decentralized local bodies. Until the government recognizes its obligation to serve the needs of all people and not its few favored cronies, the 81 or so families mentioned earlier will continue, barring a revolution, to make the Philippine economy their private preserve.

FOOTNOTES

[1]This circular was issued in January 1977.

[2]The Governor in question was Gregorio Licaros. At the time the circular was issued, he was a director of Metrobank and Home Savings Bank. Home Savings was owned by his family.

[3]Some families have members sitting as directors of more than one banking group. Not all of these have been considered here.

[4]Bapst died while this study was in progress.

[5]Since this was written, Bancom has been absorbed by the Union Bank of the Philippines, which is completely owned by the government's Land Bank of the Philippines and the Social Security System. The collapse of Bancom was due to bad loans which when written off reduced its equity to nothing. See Leo Gonzaga and Guy Sacerdoti, "Operation Cold Comfort," *Far Eastern Economic Review* (14 May 1982).

[6]When the United Coconut Authority was set up, all coconut oil mills in the country were placed under its control. Many were forced to sell out at unfavorable terms. Among those forced out of business was Granexport, a subsidiary of Cargill Industries, one of five grain companies that control world wide grain distribution. Granexport brought suit against the United Coconut Authority in U.S. courts. The suit is still pending.

[7]The BPI applied for a routine loan from the Central Bank to expand mill capacity. The loan was refused. Shortly after, the United Coconut Authority was set up and Legaspi Oil and its subsidiary, Cagayan de Oro Oil, were forced to sell out to the Coconut monopoly.

[8]See Guy Sacerdoti, "Cracks in the Coconut Shell," *Far Eastern Economic Review* (8 Jan. 1982).

[9]Though their names do not appear as directors, First Philippine Holdings seems to be a front for the Marcos-Romualdez investments. The Lopezes have not yet received any payment for their properties that were confiscated.

[10]For the present plight of the Silverio interests and Delta Motors, which lost ₱ 21 million in 1980, see Gonzaga and Sacerdoti, *op. cit.*, p. 87 ff.

[11]This figure has been adapted from the U.S. Federal Trade Commission, which found that in a competitive industry there is a return on shareholders investment ranging from 5% up to a high of 9%.

[12]Antonio Roxas, "The Evolution of the Capital Market in the Philippines," *Investment Banking in the Philippines* (Manila: Media Systems Inc., Oct. 1976) p. 29.

[13]See *Mater et Magistra* (Mother and Teacher), Encyclical letter of Pope John XXIII issued at Vatican City May 15, 1961. Trans. St. Paul's Press, Boston, July, 1961.

[14]Recent developments indicate that the rate was too fantastic. As might have been predicted, many of the empires are now contracting. See Gonzaga and Sacerdoti, *op. cit.*, and Sacerdoti, *op. cit.* Much of the data in this study predicted trouble ahead.

[15]Recent developments would seem to confirm this. See *Far Eastern Economic Review* articles cited earlier.

[16]Gonzaga and Sacerdoti, *op. cit.*

[17]*Ibid.*, p. 16.

[18]The Land Reform program of the Philippine government was a "confidence mechanism", that is, it was introduced with great fanfare to give the people the impression that something was about to be done. At the same time, it was not meant to accomplish anything really serious. For a good summary of the Land Reform program of the Philippine government, See Felix Casalmo, *The Vision of a New Society* (Manila: AC Press, 1980), pp. 61-93.

[19]David Horowitz, *Twenty-five Years of Economic Development, 1950-1975* (Baltimore: Johns Hopkins University Press, 1977), pp. 67 ff.

[20]*Ibid.*

B. THE EXTRADITION TREATY BETWEEN THE PHILIPPINES AND UNITED STATES: FACTS AND IMPLICATIONS

BY JOVITO R. SALONGA, J.S.D.

INTRODUCTION

Before the imposition of martial in 1972, the Philippines enjoyed the distinction of being one of the few countries in the world that neither sought nor concluded any extradition treaty with any State, including the United States.

In fact, from the day Ferdinand Marcos assumed the presidency after the 1965 election up to the time he declared martial law in September 1972, one year before the end of his second and last term, he did not exert any effort to initiate any extradition negotiations with the United States.

It was only in 1973, as Foreign Secretary (later Minister) Carlos Romulo revealed in a press release published in the regime-controlled media *(Daily Express, Bulletin Today, Times Journal,* February 6, 1982), that the Philippine Government began negotiations with the United States. In his statement, Romulo was quoted as saying that the implementation of the treaty after its ratification by both governments will "demonstrate even more the earnestness with which we seek to assure that the territory of each party will not be the sanctuary of those who violate the penal laws of the other." He did not explain why it was only in 1973, 27 years after the Philippines proclaimed its independence, that he arrived at this belated discovery. The truth of the matter is that the Philippines as of today has only one functioning agreement on extradition, the one signed with Indonesia in 1976. An extradition agreement was later signed with Malaysia, but up to now the latter has not ratified it. Recently, the Malaysian Prime Minister declared he will follow the example of his predecessor not to visit the Philippines. Romulo should perhaps explain why any person violating American law should bypass other congenial climes and places, travel thousands of miles to the Philippines and make it his or her privileged sanctuary. Things being what they are in the Philippines today, Romulo's account - like his other masterpieces under the Marcos' dictatorship - may yet assure him his well-deserved place in Philippine history.

This paper will present and analyze the various ramifications of the proposed extradition treaty that has been approved by the Reagan and Marcos governments and now awaits ratification by the U.S. Congress. It is the author's position that this treaty should be rejected because it is very obvious that its main intent is to intimidate and eventually punish the political opponents of the Marcos dictatorship who are now residing in the United States.

(The final text of the extradition treaty as approved by the U.S. and Philippine Governments on November 27, 1981 is attached to this monograph as Appendix B.)

I. MEANING AND PURPOSE OF EXTRADITION: THE BASIC PROBLEM

Extradition is defined in simple language as "the formal surrender of a person by a state to another state for trial and punishment."[1]

Its purpose is something we cannot possibly quarrel with - to promote cooperation among nations in the suppression of crime. Murderers, rapists, swindlers, or terrorists are menaces wherever they are. Therefore, it is in the interest of every law-abiding state that the authorities in the country of their refuge deliver them up to the government of the country where they have committed a crime.

But since the 18th century, the basic problem perceived by the famous Italian jurist, Cesare Becarria, the founder of modern penology, was that there are some legal systems in the world that are primitive and cruel. While an extradition agreement between Italy and a country having an enlightened legal system is desirable, the same extradition agreement with another country whose legal system is barbaric will make Italy a partner in tremendous oppression and injustice. Beccaria recognized the advantages of extradition but stood against its general adoption until laws of other countries became more humane, procedures less oppressive, and punishments less harsh. In his 1764 book, Beccaria, who wrote at a time when the political offense exception had not yet been introduced, said:

> "But whether the international extradition of criminals be useful I would not venture to decide, until laws more in conformity with the needs of humanity, until milder penalties, and until the emancipation of law from the caprice of mere opinion, shall have given security to oppressed innocence and hated virtue."[2]

But of course, Beccaria did not reckon with legal systems that were once civilized but, for one reason or another, have descended to the level of the barbaric.

Presumably, this is the reason why the talks between Marcos and American officials had to be suspended when the negotiations opened in Manila between May 21-25, 1973. It would be an outrage for the U.S. to enter into an extradition treaty with a country that had just imposed a dictatorship on Filipinos. In January, 1981, Marcos "lifted" martial law and negotiations for the extradition treaty were resumed on September 17, 1981. With lightning speed, the proposed treaty was finalized on September 22 and was immediately ascribed to the "lifting" of martial law. It was presented to the Reagan administration, which approved it a month later.

II. DEVICES OTHER THAN EXTRADITION

Actually, there are several alternatives open to the Philippines or the United States in dealing with alien violators of penal laws: 1) tighten up immigration requirements to preclude their entry; 2) simply deport them, if they have already gained entry; or 3) prosecute and punish them, without prejudice to deporting them after service of sentence. In case of deportation, however, deportees are usually allowed to choose their place of destination as long as the government there is willing to admit them. The rule is that deportation cannot be used as a disguised form of extradition; the interest of the deporting State is served the moment it rids itself of an undesirable alien. This is why even the deportation by the U.S. Government of Filipino exiles who can choose their place of refuge cannot possibly satisfy Marcos.

As far as Filipinos in the Philippines who have become *persona non grata* are concerned, the dictatorship has developed a variety of techniques, including trial by controlled publicity, surveillance, harassment, torture, imprisonment, and outright execution, otherwise known as "salvaging." In September 1977, Marcos declared that some 70,000 persons had been imprisoned since the declaration of martial law. Just how many of them had been tortured, no one knows, Torture included electric shocks, water cure, scalding, strangulation, sexual assault, and similar methods.[3] Curiously, Marcos and his Foreign and Defense Ministers have often asserted that there are no political prisoners in the Philippines. The political rivals of the one-man ruler, such as former Senators Benigno Aquino, Jr. and Sergio Osmeña, Jr., are classified as common criminals.

Concerning aliens who endanger the "security of the nation," i.e., the security of the House of Marcos-Romualdez, the regime may simply bar them from reentering the Philippines - as in the cases of Arnold Zeitlin of *Associated Press* and Bernard Wideman of *Far Eastern Economic Review* and *Washington Post*, or deporting them without hearing - as in the cases of Fathers Edward Gerlock and Luigi Cocquio of the Catholic Church, and Rev. Paul Wilson of the Protestant Church.

III. COMMON CHARACTERISTICS OF ANGLO-AMERICAN EXTRADITION TREATIES

Treaties of extradition entered into by the United States and Great Britain, and those concluded by countries that follow Anglo-American practice, exhibit certain common characteristics, loosely called "principles of extradition." These are enumerated below:

1. There is no obligation to surrender a fugitive from justice in the absence of an extradition treaty.

2. Political and military offenses are not extraditable. (This is Article 3 of the proposed Treaty between the U.S. and the Philippines.)

3. The act for which extradition is sought must constitute a crime and be punishable under the laws of the requesting and the requested State. This rule of double or dual criminality (which may be found in Article 2 of the proposed Treaty) is considered to be so well-established as to constitute a customary rule of international law.

4. The request for extradition, otherwise known as requisition, must be accompanied by evidence of probable cause, in accordance with the law of the requested State. (Article 9 and 10 of the proposed Treaty).

5. The person extradited can be tried in the requesting State only for the offense charged in the extradition proceeding and for a crime mentioned in the extradition treaty. This is known as the principle of speciality, which is found in Article 15 of the proposed Treaty.

Parenthetically, the proposed treaty has an Appendix which lists 42 types of offenses (nine more than the U.S. treaty with West Germany), many of which are punishable under the Revised Penal Code and under special laws.

In light of the first principle, we can understand why the Marcos regime has long wanted an extradition agreement with the United States. Without a treaty, the United States has no obligation to extradite persons wanted by the regime. On the other hand, except for Article 11 on Provisional Arrest, we can understand why some opponents of the regime who have been charged with subversion are not unduly apprehensive. First, subversion is a purely political offense and, hence, not extraditable. Second, many acts considered subversive by the military in the Marcos legal system are not considered crimes in American law. For example, non-violent dissent is not a crime in the United States, nor is "conspiracy by frequent contact" or "guilt by

association" looked upon with favor in American courts. Finally, the Marcos regime is able to get Filipino prosecutors to prosecute and Filipino judges to convict people on fabricated evidence in the Philippines but will be hard put to produce evidence of probable cause, according to the requirements of U.S. law.

IV. THE ROLE OF THE JUDICIARY IN ANGLO-AMERICAN LAW

Under the prevailing law on extradition in the United States (18 U.S.C. secs. 3184-3186), it is thejudiciary that determines whether the offense is political or not, whether the act complained of is punishable under the laws of the United States, and whether there is evidence of probable cause, according to U.S. law. The reason for vesting this power in the judiciary is found in the concurring opinion in the 1961 extradition case against former President Perez Jimenez of Venezuela, who established a dictatorship in 1948, later fled to the United States, and was charged by the new Government with having committed murder and the financial crimes of embezzlement, malversation, fraud and breach of trust. There was no evidence to show that Jimenez had anything to do with the crime of murder; but there was overwhelming evidence against him of secret commissions, bribes, malversation and breach of trust. The former president invoked the Act of State doctrine, alleging that as dictator, his acts were sovereign acts, the legality of which the doctrine precludes an extradition judge from adjudicating. The U.S. Federal judge held that Jimenez' acts were not acts of Venezuelan sovereignty and that each of the acts complained of "was for the private financial benefit" of the dictator: they constituted common crimes committed by the Chief of State done in violation of his position and not in pursuance of it. In his concurring opinion, Judge Brown* made a very significant statement:

> "Repeated often in the cases is the loose generality that the extradition hearing is not a judicial proceeding. It may not be when measured by the usual indicia of a formal judgment of commitment, appeal and the like. But the very essence of 18 USCA sec. 3184 is a reflection of *the fundamental concept among civilized nations that there shall be a non-partisan, unbiased, objective hearing by a judicial officer acting* solely *because of his judicial position* - and hence training and discipline - to determine whether there is a sufficient basis to sustain the charge under the treaty." (Underscoring supplied.)

Ex-dictator Jimenez filed a petition for habeas corpus, which he also lost. He was extradited since it was clear that his acts of "receiving a cut on government contracts," engaging in self-dealing through his front men, and receipt of unlawful gains through a corporation run by a close associate were not "committed in the course of and incidental to a revolutionary uprising or other violent political disturbance."[4]

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* In this paper, some first names are not mentioned. Law reviews, journals, and other legal research sources often do not mention first names.

Since the Webster-Ashburton Treaty of 1842, both Great Britain and the United States have committed themselves to the policy of making a judicial hearing an essential part of the extradition process. The rationale is explained by one author on the subject:

> "For it seems to be beyond question that constitutionally impartial organs are better fitted to decide questions affecting individual liberties than the organs more closely geared to governmental policy."[5]

Another pertinent provision runs as follows:

> "Whenever there is a treaty or convention for extradition between the United States and a foreign government, any justice or judge of the United States, or any magistrate authorized to do so by a court of the United States or any judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person within his jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or magistrate to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made."[6]

The hearing before the judge or magistrate under this section is similar to the preliminary hearing in the criminal case. The accused may not convert the hearing into a full trial on the merits. The requesting State may produce hearsay evidence, such as affidavits and depositions; witnesses need not be produced. The probative value of such evidence, however, is another matter. The function of the court is to determine whether there is sufficient evidence to support the request for extradition. The burden of proof is on the requesting State to show that the accused is probably guilty of the offense charged and that the acts imputed to the accused - in accordance with the rule of double criminality - constitute a criminal offense under the laws of both States.

On the other hand, the accused may introduce evidence 1) to show wrong identity, i.e., that he or she is not the person sought by the

requesting State; or 2) to explain the circumstances of the offense. The person accused may present evidence of the political nature of the crime, for the purpose of showing that the offense is not extraditable under the treaty.

Usually, the Executive Department, through the Department of State, renders advice to the judge on the question of the political nature of the alleged offense.

Under present law and practice, if the judge or magistrate finds that the defendant is not extraditable, whether because the offense is political, or because the rule of double criminality has not been met, or because of lack of evidence of probable cause, the Executive Department cannot reverse the finding and order that the defendant be extradited. On the other hand, if the defendant is found extraditable by the judge or magistrate, the Executive Department has the reserved power to reverse the decision and refuse to surrender the defendant to the requesting State. Generally, the State Department has the power to conduct a *de novo* examination of the issues and court proceedings. The Secretary of State may differ with the committing magistrate on the weight or sufficiency of the evidence, or he may even consider matters outside the record of the case, such as competing requests from different countries, a time lapse barring prosecution or public policy in light of current international relations.[7] In other words, every effort is exerted to benefit the defendant, certainly a manifestation of the social policy that it ought to be difficult for the State to deprive persons of their life and liberty. As will be explained shortly, this is the policy the proposed treaty, as applied to conditions in the Philippines, seeks to change.

V. POLITICAL OFFENSE EXCEPTION: THE ANGLO-AMERICAN CASES

Historically, extradition in ancient times down to the Middle Ages did not make any exception for political offenders. But after the French Revolution, the consequent spread of liberal ideas, the recognition by civilized societies of the right of the individual to dissent, and the sovereign prerogative of the people to revolt against an entrenched tyranny, so well expressed in the American Declaration of Independence, make the idea of extraditing dissenters and freedom fighters more and more repulsive. France and Belgium initiated the political offense exception in their extradition treaty of 1834, and other countries such as England and the United States followed suit.

In the United States, neither Congress nor the Supreme Court has formulated a definition of the term "political offense," thus leaving it to the Federal judges and magistrates to define it on a case-by-case basis.

Authorities divide political offenses into two: purely political offenses and relative political offenses. Purely political offenses are acts directly aimed at the Government, such as treason, rebellion, sedition, espionage, and subversion. Under the Philippine Anti- Subversion Law, as amended, subversion is committed "for the purpose of overthrowing the Government...with the open or covert assistance and support of a foreign power." Relative political offenses are those that might be regarded as common crimes, were it not for the fact that they are committed in connection with a political act or perpetrated in a political context, such as murder, homicide or arson committed in connection with an uprising, revolt or civil war.

While purely political offenses are easy to recognize, relative political offenses pose some difficulties and must be distinguished from common crimes. In Anglo-American law, this difficult task is reposed in the courts. (A summary of the cases decided by British and American courts is found in Appendix A containing supplemental data at the end of this monograph.)

The decisions in the above cases, including the decision against former President Jimenez of Venezuela, were apparently satisfactory to the Executive Department. But a decision in the Peter McMullen case of 1979 (discussed below) reportedly shocked U.S. Government officials and led to a move to limit the jurisdiction of the courts and assign the "political offense" question to the State Department.

VI. THE IRISH REPUBLICAN ARMY AND THE MOVE TO ALTER THE PRESENT PROCEDURE ON POLITICAL OFFENSES

Let us now consider the McMullen case. Peter McMullen, an Irish Catholic youth, joined the British Army, became disenchanted with the British activities in Northern Ireland, and deserted to the Provisional Irish Republican Army (IRA). He allegedly participated in the bombing of the Palace barracks in 1972 and of Claro barracks in 1974. In 1974 he was sentenced to three years for being an IRA member and for firearms violations. He left Dublin and entered the U.S. illegally in 1978. He was arrested in California and held for deportation as an illegal alien. Following his arrest, he made a detailed statement of his participation in IRA bombings to detectives of Scotland Yard. Thereafter, extradition was sought by the United Kingdom on the ground of attempted murder arising out of the bombing of Claro barracks in 1974. McMullen contended that from 1970 to 1979, the IRA, by its insurgent and terrorist activities, had sought independence from Northern Ireland and that its activities were not confined there but throughout Great Britain. This fact, together with the presence of British troops in Northern Ireland and the termination of Home Rule, led the Magistrate to conclude that an insurrection and a disruptive uprising of a political nature did in fact exist in Northern Ireland in 1974 when the barracks bombing occurred. Hence, the Court denied extradition, holding that the defendant had established by evidence that the act of bombing the barracks was political and that the burden of contradicting this had shifted to the Government - a burden it was not able to meet. This and the subsequent case of Desmond Mackin, an IRA member, who was held responsible for the killing of a British soldier in Belfast but was considered a political offender, hence not extraditable, by a U.S. court, displeased some high officials in Washington. This explains why there is a pending bill in the U.S. Senate, introduced by Senator Strom Thurmond and others in September 1981, which would remove the political offense issue from the courts and vest in the Secretary of State the exclusive discretion to determine whether an offense is political or not. It was apparently in anticipation of approval by Congress of this measure that the proposed treaty with the Philippines was drafted in the way it now reads - the fourth U.S. treaty of this kind (with Mexico in 1980 and Netherlands and Colombia in 1981). However, it is the first treaty of its kind signed by the State Department under the Reagan Administration with a notoriously corrupt, repressive dictatorship.

Although the proposed treaty with the Philippines says political offenses are not extraditable, under Article 3:

> "If any question arises as to the application of this paragraph, it shall be the responsibility of the Executive Authority of the Requested State to decide."

It has been argued that this approach has "much merit" in that "it would eliminate the cumbersome process of advising a judge of and proving as fact the political culture of a foreign country by means

of the rules of evidence. The proposal would also utilize State Department expertise by mandating that the Secretary of State evaluate sensitive international situations."[9] It has also been said that in the hands of the Department of State, with its competence and expertise on the subject, more consistent rulings may be expected. "A decision on the political offense exception," says a State Department memorandum, "can have a devastating impact on U.S. relations with the foreign country." Supposedly, a "more informed decision" can be made "in a manner less likely to be offensive to the friendly government involved in the case."[10]

The assumed consistency on the part of the State Department is erroneous; it has been inconsistent under various administrations. Insofar as the Philippines is concerned - and this is true of Guatemala, Argentina, Chile and El Salvador - there is much inconsistency between the State Department under Carter and the State Department under Reagan. The proposed U.S.-Philippines Extradition Treaty is the best evidence. The negotiations during the time of President Carter stagnated. On the other hand, as revealed by a well-known reporter in his regular column, "Merry-Go-Round":

> "...formal negotiations on the treaty were resumed during the first three months of the Reagan Administration...Without publicity, the treaty was whisked through the State and Justice Departments in record time."[11]

During the time of Carter, no high official of the U.S. Government came to tell oppressed, betrayed Filipinos that the one-man ruler has been adhering to "democratic principles and processes," something Marcos himself never seriously claimed. What we have in the Philippines, Marcos is wont to assert, is "constitutional authoritarianism" - a high-sounding term for dictatorship which he hopes ordinary Filipinos will not understand.

Moreover, consistency is a virtue if it will serve the ends of simple fairness. But if consistency in the Executive Department will lead to uniformly unjust decisions, it would be more consistent with American values to have occasionally inconsistent decisions by Federal judges and magistrates, who, as human beings, inevitably commit errors, but errors committed on the side of human rights and fair play, without much regard to backdoor haggling over such bargaining items as the continued maintenance of U.S. military bases in the Philippines and the domination of a semi-colonial economy by big American business interests. Incidentally, the next round of negotiations over the U.S. military bases will be held in 1984.

In practice, what the proposed treaty means is this: if the defendant argues or proposes to prove in an extradition hearing before a Federal judge that the Marcos request for extradition, say, for attempted assassination of a member of the Marcos cabinet, was in fact made with a view to try and punish him for his political differences with Marcos, the judge must leave that matter to the Execu-

tive Department for decision. The Secretary of State, according to a memorandum in support of the bill, is not obliged to provide a formal hearing to the accused. He will utilize the resources of the State Department for gathering evidence and assessing the claim of the "fugitive." The Department "would, of course, welcome the views of members of Congress, concerned citizens and other interested parties." In short, there would be no orderly hearing, no rules of evidence, and no due process. Considering the partiality of Reagan to "friendly dictators," like Marcos, and considering the ingratiatory platitudes of Vice-President Bush concerning Marcos, how can they qualify as impartial arbiters?

Over the long haul, it may be good for the U.S. Government to leave this matter to the judiciary, as prescribed by statute and observed in prevailing practice. Denying a request for extradition will undoubtedly reflect on the good faith of the requesting Government or on the standards of justice in the Philippines. In the event a Federal judge decides that the offense is political and therefore not extraditable, whoever is the Secretary of State is spared the embarrassment of having to make that point in crucial diplomatic negotiations with the Philippines.

A better alternative would be for the U.S. Congress to define what is or what is not a political offense in a statute, and leave it to the courts to decide specific cases in light of the definition. The European Convention on the Suppression of Terrorism (1977) has broken new ground and may well serve as a good example. Article 1 of the Convention provides that certain crimes shall not be regarded as political offenses, including:

c. a serious offense involving an attack against life, physical integrity or liberty of internationally protected persons, including diplomatic agents;

d. an offense involving kidnapping, the taking of a hostage or serious unlawful detention.

VII. MARCOS' MAJOR PROBLEM

Obviously, Marcos' major problem has always been his political opponents and critics in the United States. This is so for several reasons.

First, the biggest concentration of Filipino immigrants and overseas Filipinos, including those of Filipino ancestry, is found in the United States - around one and a half million, according to the latest accounts. A good number have settled in California (now Filipinos are the largest Asian group, numbering 400,000); in Hawaii (where they constitute the third largest ethnic group, estimated at 145,000); and in New York and Illinois. Filipinos are leaving the Philippines in larger numbers. One of the most pathetic sights in Manila is the long, daily procession of people in the U.S. Embassy Building on Roxas Boulevard as early as two o'clock in the morning - all of them apparently determined to leave their country.

Second, it is in the United States that the mass media, owned and kept by no single individual, report the most credible and often critical accounts that give a negative image to the regime that was supposed to "save the Republic and reform Philippine society." These include the supposed ambush of the Minister of National Defense on the eve of the imposition of martial law, the fantastic takeover of the mass media, public utilities, and other business enterprises by Marcos' closest relatives and business associates, the periodic farcical referenda and plebiscites that always result in a 90% mandate in favor of the dictatorship, the massive raids on the public treasury and the glitter that surrounds the people in the Palace by the *Pasig*, while the Ministry of Health reports that more than 85% of Filipino school children suffer from malnutrition, the paper lifting of martial law in January 1981 just before the Reagan inaugural, the landslide victory of Marcos in the no-contest, opposition-boycotted presidential election of June 1981, the visit of then Secretary of State Alexander Haig congratulating the ruler for his "wonderful victory" and pledging the support of the U.S. Government, the unforgettable toast of Vice-President George Bush commending Marcos for his adherence to "democratic principles and processes," and more recently the sensational kidnapping of Tommy Manotoc, the unwanted son-in-law of Mr. and Mrs. Marcos, and his so-called rescue by crack units of the military intelligence in a mountain hideout in Pililla, Rizal, 56 miles east of Manila. An American magazine quoted Manotoc as implying that the regime was responsible for his "kidnapping" and that his rescue was staged by the military.[12] Other major publications like *New York Times* and *Newsweek* ran reports that tended to be skeptical about the Marcoses' position on the kidnapping. U.S.-based opposition newspapers like *Philippine News* (San Francisco) also played up the story in ways that hurt the image and credibility of the regime. In general, Marcos has not had a good press in the U.S. since he imposed martial law. It is in the U.S. where he has been most hurt politically. He wants to get back at his opponents.

Without extradition, Marcos and his agents are limited to messy, unilateral devices against U.S.-based opponents - bribery, threats, blacklisting, acts of reprisal against relatives in the Philippines, abduction, kidnapping, and even liquidation. A former Marcos top propagandist, Primitivo Mijares, who defected, then testified against the Marcos regime before the Fraser Subcommittee in Congress despite a big bribe offer, and wrote all he knew about the secrets of the house in his book, *The Conjugal Dictatorship,* disappeared and is believed to have been liquidated by agents of the regime.

From the perspective of Marcos and his collaborators, the marvelous thing about extradition is that the regime need not resort to these shabby devices of self-help in the United States. His long arm can reach his opponents with the open support of the U.S. Government. He has already targeted 40 Filipinos in the United States that he wants returned to the Philippines for various "crimes."

It has been argued that the proposed treaty will help both governments in their fight against terrorism. Filipinos have no quarrel with that objective - they deplore random, indiscriminate violence that kills or maims innocent persons, but they also condemn the official terrorism to which the whole nation has been subjected since the imposition of martial law. The trouble has been that high U.S. officials do not want to see and listen and apply a double standard. In the name of "national security," so many innocent Filipinos have been arrested, detained and tortured, without investigation and without charges, by a regime that does not want to distinguish between political dissenters and real terrorists. The U.S. has not really protested against the violation of human rights in the Philippines. But when martial law was declared in Poland, there was a lighted candle in Washington for the Polish people.

VIII. THE LEGAL SYSTEM IN THE PHILIPPINES UNDER THE MARCOS REGIME

Soon after the release of the news that the Reagan administration, through the State Department, had quietly signed in Washington an Extradition Treaty with Ambassador Eduardo Romualdez of the Marcos regime on November 27, 1981, Jay Mathews of the *Washington Post* (January 3, 1982) interviewed an unidentified official in the State Department who stated that even if the treaty were ratified by the U.S. Senate, requests for extradition can be refused by the U.S. Government, "if the legal system in the country requesting extradition is not thought to meet American standards of justice."

Now, it seems that the question whether the Philippine legal system under Marcos meets U.S. standards, or, better still, international standards of justice, is one that U.S. Government officials should have studied before entering into an extradition agreement with the Marcos regime. It is no triumph of common sense for the U.S Government to first enter into an extradition agreement with the regime, and later examine whether the legal system in the Philippines today meets American standards. At this point, even the agents of Marcos would be correct in asserting that the Reagan Administration does not really know what it is doing. It appears that the American side has not really studied this angle.

One does not have to be an expert in comparative law to realize that even for common criminals, there can be no reciprocity between two legal systems that are diametrically opposite, not so much in theory but in actual practice. That is why the Preamble of the proposed treaty stating that the two Governments desire to provide for more effective cooperation in the repression of crime through the reciprocal extradition of offenders is not only euphemistic and misleading but an insult to common decency and justice.

Let us compare the two legal systems - The American and Philippine.

The Bill of Rights of the New Philippine Constitution is heavily influenced by the U.S. Constitution. The rules of criminal procedure found in the Rules of Court of the Philippines are derived form American law and precedents. Hence, in theory and formulation, the accused under Philippine law is entitled to all the benefits of the process, equality of treatment, and the rule of law.

In practice, however, there is a yawning gap between American law and the Marcos legal system, especially with regard to "public order violators." In American law, the accused is presumed innocent unless found guilty by final judgment of a competent court. In the Marcos legal system, a suspect is presumed guilty and the burden is on him to prove his innocence. In American law, a person cannot be imprisoned without being informed of the charge or charges against him; in the Marcos legal system, a person can be detained indefinitely, without charges and without trial. In American law, guilt by associa-

tion is condemned; in the Marcos legal system, that concept is deeply honored in practice. In American law, dissent is tolerated, even encouraged; in the Marcos legal system, even honest, principled dissenters are considered criminals and labelled as terrorists, since they "undermine the security of the nation," that is to say, Marcos' own security. In American law, courts are independent and judges enjoy security of tenure - they can even declare acts of the Executive void and ineffective, since no one is above the law; in the Marcos system, the one-man ruler is law- he issues all kinds of decrees, published or otherwise (known as the secret "midnight" decrees), and he can dismiss judges by accepting the undated resignations that had been exacted from them, or by simply appointing their successors. Since martial law was declared, no decree of Marcos has been declared void, nor has he lost any case in court, however flagrant his violation of the Constitution.

If Reagan, Bush and Haig had only bothered to read even the sanitized yearly reports of the State Department to Congress on the human rights situation in the Philippines up to 1981, or considered the more realistic, objective reports of the Amnesty International (AI) and the International Commission of Jurists (ICJ), or the annual reports of the Task Force on Detainees of the Association of Major Religious Superiors of the Philippines (AMRSP), they might have seen the wisdom of delaying the signing of the Extradition Treaty, at least until the restoration of a civilized system of justice in the Philippines. Consider the findings of the 1975 AI Mission that went to the Philippines, which are summarized below:

> "...the evidence establishes a consistent pattern of gross violations of internationally recognized human rights, including:
>
> 1. systematic and severe torture, and cruel, inhuman, and degrading treatment during the interrogation process;
> 2. indefinite detention, in many cases for several years, without being informed of the charges and without trial of the issues;
> 3. other flagrant violations of the rights which are said to be "enshrined" in the Bill of Rights.
>
> "In sum, the judiciary in the Philippines has become totally ineffective in preventing the violations of human rights...The rule of law under martial law is authoritarian presidential-military rule, unchecked by constitutional guarantees or limitations...The Philippines has been transformed from a country with a remarkable constitutional tradition to a system where star chamber methods have been used on a wide scale to literally torture evidence into existence."

Another international body, the Geneva-based ICJ, sent two missions to the Philippines to survey the situation there in May and November 1975. Its 1977 report confirmed and amplified the AI find-

ings.[13] The ICJ concluded that the present government was employing its power under the Constitution not to protect the nation but "to perpetuate the personal power of the President and his collaborators and to increase the power of the military."

As mentioned earlier, the "lifting" of martial law in January 1981 led to the resumption of negotiations in September 1981. The restrained, toned-down 1982 Annual Report of the U.S. State Department to Congress noted that martial law was formally lifted last January but the President (referring to Marcos) "retains in reserve most of the powers he enjoyed under martial law" and that he "continues to dominate the exercise of power in the Philippines." The report was released by the State Department on February 8, 1982 after the treaty had been approved. Ten days later, six human rights organizations in the Philippines held a National Conference on Human Rights in Manila. The theme of the Conference was "Escalating Incidents" despite the official lifting of martial law. An AP news dispatch (February 19, 1982) said the participants charged that "military atrocities have increased since martial law was lifted."

As we shall see, the basic contradiction between the American and Philippine legal systems, and the resulting lack of reciprocity, infect every stipulation in the proposed treaty. This perverts the whole agreement and makes the U.S. Government, if it were to be ratified and implemented, an instrument of oppression and injustice in the Philippines. In particular, it would make the State Department an accomplice to the extension of the corrupt and repressive Marcos dictatorship to the United States.

IX. ILLEGAL DISCRIMINATION AGAINST FILIPINOS UNDER ARTICLE 8

The disparity between the two legal systems and the absence of true reciprocity and mutuality in the proposed Treaty will result in gross discrimination and injustice against Filipinos residing or living in the United States who are entitled to the benefits of due process and equal protection of the laws. This is inexcusably so, under Article 8, entitled, "Extradition of Nationals."

Anglo-American practice is traditionally opposed to the idea of exempting nationals from extradition. The Harvard Draft Convention of 1935 - the most authoritative and detailed study of the subject - provides in Article 7 that "A Requested State shall not decline to extradite a person claimed because such a person is a national of the Requested State." Accordingly, Article 4 of the U.S.-Israel Extradition Treaty of 1963 states that "a Requested Party shall not decline to extradite a person because such a person is a national of the other country." However, European countries, led by France, Germany, Holland, Italy, and Switzerland insist on the right not to extradite their own nationals. Several reasons have been advanced to justify this stand, but two of them stand out: 1) these States follow the nationality principle, regardless of the place of the crime; and 2) there are legal systems in the world that cannot be trusted in the handling of cases of alien offenders. In the case of West Germany (FRG), there is the additional consideration that under its internal law, extradition of German nationals is expressly prohibited, at the same time giving to German courts jurisdiction to try and punish them for crimes committed abroad provided they are punishable both by German law and the law of the place where the crime was committed.[14] Anglo-American law on criminal liability and criminal jurisdiction is based on the territoriality principle; i.e., crimes are punishable by the State in whose territory they are committed and it is the court of such State that has jurisdiction to impose the punishment. As a compromise with European insistence on the right to refuse extradition of their nationals, the U.S. has, in treaties with such States, agreed to the optional extradition clause under which neither of the contracting parties has the duty to extradite its nationals. Like U.S. law, our law on criminal liability and criminal jurisdiction is largely based on the territoriality principle, and there is no internal law in the Philippines that prohibits extradition of Filipino nationals. In spite of the difference in background, the Extradition Treaty of the U.S. with West Germany and the proposed Extradition Treaty with the Philippines contain the identical provision that:

> "Neither of the contracting parties shall be bound to extradite its nationals. The competent Executive Authority of the Requested State, however, shall have the power to grant the extradition of its nationals if, in its discretion, this is deemed proper to do."

American experts in the State and Justice Departments may be presumed to know that there is no legal impediment in Philippine law to the extradition of Filipino nationals to the United States. And since the same thing is true of American law, there is no reason for the existence of the optional clause in Article 8 of the proposed Treaty, unless they had grave doubts about the quality of the legal system in the Philippines under the Marcos dictatorship and did not want American fugitives from justice accused of violating Philippine penal laws to be exposed to the hazards of prosecution and punishment under such a system.

As stated earlier, although the proposed treaty purports to be reciprocal, both Governments know that it is the Marcos regime that has been hankering and lobbying for an extradition agreement since 1973. It is, therefore, logical to expect that in most cases, it will be the Philippines, under the Marcos dictatorship, that will be the requesting State, with Filipinos living in the United States as the primary targets. These Filipino residents, who are entitled under the U.S. Constitution to due process and equal protection under the laws, are subject to extradition, with all the risks inherent in a legal system that has fallen way below minimum international standards. On the other hand, in the few cases of Americans wanted in the Philippines for similar violations of Philippine laws, the U.S. Government is under no obligation to extradite them. In fact, a provision in the U.S.-France Extradition Treaty which states that "neither of the Contracting Parties shall be bound to deliver up its own citizens or subjects under the stipulations of this Convention" has been interpreted by the U.S. Supreme Court to mean that since there is no general obligation to extradite in the absence of an extradition treaty, the President of the United States has no power under the Constitution to surrender a U.S. citizen under an extradition treaty that imposes no such obligation in express terms.[15]

It may be argued that under paragraph 3 of Article 8, in case of refusal to surrender an American national to Philippine authorities, the U.S. Government is nevertheless bound to "submit the case to its competent authorities in order that appropriate proceedings may be taken." Although a similar provision in treaties with European states may be meaningful insofar as those States are concerned, vis-a-vis their own nationals, this has little meaning in the context of American law. In other words, paragraph 3 of Article 8 cannot confer on U.S. courts the competence to try and punish an American citizen who has allegedly violated Philippine penal laws. Anglo-American law, unlike many European laws which follow the nationality principle in respect of crimes and jurisdiction, adheres to the concept of territoriality - only the courts in the country where the crime was committed can try and punish the offender. Moreover, foreign penal laws do not have extraterritorial effect in the United States. Hence, in every instance where the U.S. refuses to extradite American nationals for offenses committed in the Philippines, there is no way by which they can be tried and punished in the United States.

In short, Filipino citizens in the United States accused of

violating the criminal laws of the Philippines are subject to extradition to the Philippines under a legal system notorious for its torture methods. On the other hand, the U.S. Government is not bound to extradite American citizens in the U.S. accused of similar violations - they will almost always go scot-free.

X. CONVICTED PERSONS AND SUPPORTING EVIDENCE UNDER ARTICLE 9 OF THE PROPOSED TREATY

Article 9 of the proposed treaty is entitled "Extradition Procedures and Required Documents." With respect to a person who is sought for prosecution, the request must be accompanied by supporting evidence of probable cause "for his arrest and committal for trial" if the offense had been committed in the United States. But paragraph 4 of the same article omits the requirement of evidence of probable cause with respect to a person who has already been convicted by a Philippine court. The omission of this requirement has been interpreted in some circles in the Philippines to mean that in the case of a convict, the U.S. Government has no choice but surrender the defendant to Philippine authorities who need not show evidence of probable cause under American law. Getting a conviction in Philippine courts is not a difficult problem. There are "robots" to inflict torture, manufacture evidence, file spurious charges, try cases, and render convictions as desired. The law passed last year by the Interim *Batasang Pambansa* (National Assembly) - BP29 - abolished all courts below the Supreme Court in the name of reorganization. This may have multiplied the "robotization" of a judicial system that, before the emergence of martial law and one-man rule, was the pride of the Philippine bench and bar.

Therefore, in order to avoid misunderstanding with the Marcos regime, the proposed treaty should be renegotiated to make clear that even in the case of convicted persons, there must still be supporting evidence of probable cause.

XI. PROVISIONAL ARREST UNDER ARTICLE 11 OF THE PROPOSED TREATY

The provision on provisional arrest may not be unusual in extradition treaties of the United States with other States that adhere to the rule of law and fair play. This may not be true in the event the U.S.-R.P. treaty is ratified. Article 11, entitled "Provisional Arrest," may well sound the death knell of the resistance movement to the Marcos dictatorship here in the United States.

Under Article 11, an application for the provisional arrest of a leader of the Marcos opposition in California or New York may be made through the diplomatic channel, "in case of urgency." The application should merely contain a description of the person sought; the location of the person, if known; a brief statement of the facts of the case, including, if possible, the time and location of the offense; a statement that a request for extradition of the person will follow.

Note that "urgency" and "emergency" are stock words of the Marcos regime in the Philippines. If one takes a look at the 1973 martial law Constitution, as amended, one will notice the words "urgency" and "emergency" to justify the use of martial law powers even with the lifting of martial law. Under Article 11, there is no need for the requesting State to show evidence of probable cause. A Filipino dissenter arrested under this may be detained for at least 60 days, while the U.S. Government is awaiting the regular requisition from the Marcos regime, which must submit supporting documents to show evidence of probable cause. Now, paragraph 3 of this article apparently makes it a ministerial duty on the part of the U.S. Government to secure the arrest of a person who is the subject of an urgent application for provisional arrest. All Marcos has to do to paralyze the leadership and dismantle the resistance movement in the United States is ask for the arrest, from time to time, of key personalities of the opposition, even if he is unable to meet the requirements of a regular request for extradition. As stated by Stephen Cohen, a former deputy Assistant Secretary of State for Human Rights, "Marcos feels that this treaty will enable him to eliminate his opposition in the United States."[16]

There is a glaring omission in this article of the double criminality clause which is found in other extradition treaties of the United States. The U.S.-Israel Extradition Treaty, for example, provides that the application for provisional arrest shall contain such information as "would be necessary to justify the issuance of a warrant of arrest in the Requested State had the offense been committed there." The reason for the rule of double criminality is obvious. It ensures that the life and liberty of an individual are not imperiled except as a result of an act recognized as criminal by the requested State. The U.S. Government has the right to insist that it will not extradite categories of offenders for which, in return, it would never have occasion to submit a request for extradition. Many authorities maintain that the rule of double criminality is a customary rule of

international law because of its general acceptance. Article 11, paragraph 3 reads as follows:

> "On receipt of such an application (for provisional arrest), the Requested State shall take appropriate steps to secure the arrest of the person sought. The Requesting State shall be promptly notified of the result of its application."

The phraseology in the proposed Treaty should be revised to avoid confusion and misunderstanding by making it explicit that the application for a person's provisional arrest should satisfy the rule of double criminality.

XII. THE RETROACTIVITY CLAUSE OF THE PROPOSED TREATY

No provision in the proposed Treaty has evoked more disappointment and disgust in the Philippines than the retroactivity clause found in Article 21:

> "This Treaty shall apply to offenses committed before as well as after the Treaty enters into force." (underscoring supplied.)

The general rule in all modern legal systems is that laws and treaties should have no retroactive effect. The U.S. Congress itself cannot enact *ex post facto* laws. Even the martial law Constitution of the Philippines rules out, at least in theory, the idea of giving laws retroactive application. But this proposed Treaty runs counter to this principle of fairness and common sense. This would mean that all offenses allegedly committed during the martial law years (1972 to 1981), as long as they are among the 42 types of offenses listed in the Schedule of Offenses, are extraditable. For a regime that is in the habit of antedating decrees[17] and important public documents, and with a reputation of fabricating all sorts of evidence, this article is fraught with mischievous implications.

Nearly all extradition treaties of the U.S. contain no retroactivity clause - with four exceptions, the most important being the U.S. Extradition Treaty with West Germany in 1980. This is the treaty reportedly cited by Solicitor-General Estelito Mendoza of the Marcos regime to justify the provision on retroactivity found in the proposed Treaty with the Philippines. The West German treaty cannot serve as a good precedent for the Philippines, for several reasons. First, Germany had an extradition treaty with the U.S. dated July 12, 1930. It was suspended during the Second World War and did not operate after the war because of the division of Germany into two separate entities - West Germany and East Germany. This is why the treaty with West Germany in 1980 contains a retroactivity clause, with one qualification, which will be discussed shortly.

First, the Philippines has no comparable history with the United States in the matter of extradition - in fact, no such history whatsoever. There is ample reason for extraditing and prosecuting the Nazi war criminals still hiding in the United States, but there is no reason to reach back and extradite Filipinos, untainted by any criminal record before Marcos declared martial law in 1972, who have sought refuge in the United States to be free from the clutches of the repressive dictatorship. By any standard, they are not "fugitives from justice," but rather from injustice.

Second, the historical progress of West Germany from dictatorship to democracy is matched by a reverse development in the Philippines, namely, the retrogression from a functioning democracy prior to 1972 to a corrupt, violent dictatorship under Marcos. West Germany is a

free, open society whose institutions of law and justice are on a par with those of the United States; the Philippines, to use Marcos' own description, is a "command society" whose institutions of law and justice are way below the minimum international standards of law and justice.

Third, the proposed treaty with the Philippines copied the first sentence which imposes an important qualification. This second sentence reads as follows:

> "Extradition shall not be granted, however, for an offense committed before this Treaty enters into force which was not an offense under the laws of both Contracting Parties at the time of its commission." (Article 31 of the U.S.-FRG Treaty of Extradition.)

But even a belated insertion of this omitted sentence will not remedy the basic flaw in an article that has no reason for being. So abhorrent is the concept of retroactivity that even Teodoro Valencia, top columnist of the Marcos regime, wrote that the proposed treaty between the Philippines and the U.S. should not be retroactive.[18]

XIII. CONCLUSIONS

In the context of Philippine conditions and the relations between the U.S. and the Philippines under the Marcos dictatorship, the following articles should either be deleted or redrafted. Better still, the U.S. Congress should reject the entire extradition treaty with the Philippines proposed by the Reagan administration.

1. Article 3, which assigns to the Executive Department the determination of whether an offense is political or not. It is not right that the lives and liberties of Marcos' opponents and critics in the U.S. engaged in the struggle for truth, justice and freedom should depend on the decision of a Department led by men (like Reagan, Bush, and ex-Secretary Haig) who have pledged their support to the dictatorship in the Philippines, influenced not only by personal friendship, but also by the presence of U.S. military bases in the Philippines, and the continued domination of the Philippine economy by American multinational corporations.

2. Article 8, which empowers the U.S. Government not to extradite American nationals accused or convicted of violations of Philippine penal laws. This is grossly discriminatory, since Filipinos residing in the U.S., entitled to such rights as equal protection of the laws and due process, are not only subject to extradition under the terms of the proposed treaty, but to all the hazards of interrogation, prosecution, and punishment under a legal system condemned by the Amnesty International and the International Commission of Jurists for "gross violations of internationally recognized human rights, including systematic and severe torture, and cruel, inhuman and degrading treatment...indefinite detention. ...where star chamber methods have been used on a wide scale to literally torture evidence into existence." On the other hand, U.S. nationals who are not extradited can be neither tried nor punished in the U.S., since foreign laws have no extraterritorial effect in the United States.

3. Article 9, insofar as it dispenses with the requirement of evidence of probable cause, according to U.S. law, with respect to convicted persons. Because of the ease with which the Marcos regime can get judgments of conviction from judges in the Philippines who have no independence nor security of tenure, the practical effect of this article in many cases would be to dispense altogether with the submission of evidence of probable cause as required by U.S. law.

4. Article 11, which apparently makes it the ministerial duty of the U.S. Government to secure the arrest of persons subject of applications for provisional arrest "in case of urgency." Since there is, apparently, no need to show evidence of probable cause or satisfy the rule of double criminality, the proposed Treaty will enable Marcos to paralyze the leadership of the resistance movement and eliminate the political opposition in the U.S. by simply asking for the arrest of key personalities from time to time - in the name of urgency.

5. Article 21, which makes the treaty retroactive, that is, applicable to offenses committed before the treaty comes into force. This article is especially frightening considering the Marcos regime's notoriety in antedating secret presidential decrees and fabricating all sorts of incriminating evidence.

These objectionable provisions serve to underscore a fundamental defect not found on the face of the treaty - the lack of reciprocity as a result of a basic antagonism between the legal system of a free, open society (the U.S.) and the legal system of a regimented, closed society (the Marcos dictatorship).

A country whose legal system has terrorized Filipinos and aliens alike cannot be considered a sanctuary for persons who have allegedly violated American laws. On the other hand, since the beginning of its history, the U.S. has been known as a refuge for oppressed and persecuted individuals in other lands. Why the U.S., a democracy with a deep commitment to the rule of law and the primacy of basic human rights, should even consider the idea of entering into an extradition treaty with the Marcos dictatorship, knowing that the arrangement cannot be reciprocal, is at once a paradox and a scandal. Why the State Department, whose awareness of the true situation in the Philippines since martial law was declared in 1972 is reflected in its sanitized annual reports on human rights to Congress, should agree to become a mere extension of the corrupt, repressive dictatorship in the Philippines and an active party to gross oppression and injustice, has made many Filipinos wonder whether the U.S. Government is waging war against the Filipino people.

All Filipinos and Americans who care for freedom and justice and all who share in their aspirations for a better tomorrow should work for the rejection by the U.S. Senate of the proposed Treaty of Extradition with the Philippines.

FOOTNOTES

[1]"Research in International Law Under the Auspices of the Faculty of Harvard Law School," 29 *American Journal of International Law*, 15, 21 (Supp. No. 1, 1935). For the sake of brevity, various law journals and reviews usually refer to this as *Harvard Research*.

[2]*Dei delitti e delle pene* (Crime and Punishments), trans. by J.A. Farrer, 1880, pp. 193-4.

[3]For the statement of Marcos and the evidence of torture, see *Report of an Amnesty International Mission to The Republic of the Philippines - 22 November - 5 December 1975*, 2nd ed. (London: Amnesty International Publications, March 1977); also Robert Youngblood, "Political Detainees in the Philippines," paper presented at the annual conference of the Association for Asian Studies, Chicago, April 2-4, 1982. The Task Force on Detainees (TFD), a church-based group run by Catholic nuns, reported that in 1981, 307 persons were "salvaged," a military euphemism for executions of suspected subversives; 38 others disappeared "with no evidence of death." See AP Report from Manila by Ruben Alabastro, February 19, 1982; see also 1981 Amnesty International Report.

[4]290F. 2d 106, 108 (1961); 311F. 2d 547 (5th Cir. 1962); 314F. 2d 654 (5th Cir.), cert. denied 373 U.S. 914 (1963).

[5]I. A. Shearer, *Extradition in International Law* (Great Britain: Manchester University Press, 1971), p. 71.

[6]Title 18, section 3184, *United States Code*.

[7]See Steven Lubet and Morris Czaches, "The Role of the American Judiciary in the Extradition of Political Terrorists," 71 *Journal of Criminal Law and Criminology*, 193, 199 (1980). See also M. Cherif Bassiouni, *International Extradition and World Public Order* (New York: Oceana Publications, Inc., 1974), 531-537.

[8]In the matter of the Extradition of Peter G. McMullen, Magistrate No. 3-78-1099 (N.D. Cal,. filed May 11, 1979).

[9]William Hannay, "International Terrorism and the Political Offense Exception to Extradition," 18 *Columbia Journal of International Law*, (1980) 381-412.

[10]U.S. State Department, *Legal Aspects of the U.S.-Philippine Extradition Treaty*, (Washington, D.C., 1981), p. 4.

[11]Jack Anderson, "A Gift for Marcos From Us," *Washington Post* (17 Jan. 1982).

[12]"Tommy Returns," *Time* (22 Feb. 1982), p. 32.

[13]See *The Decline of Democracy in the Philippines*. A Report of Missions by William J. Butler, Esq., John P. Humphrey, and G. E. Bisson, Esq. (Geneva: International Commission of Jurists, Aug. 1977).

[14]Basic Law of the FRG, 1949, Art. 16 II: 155 BFSP 503; Section 3(1) of the German Criminal Code.

[15]U.S. v. Valentine ex rel. Neidecker, 299 U.S. 5 (1936).

[16]Jack Anderson, *op. cit.*

[17]For an interesting discussion of the secret, "midnight" decrees of Marcos, purportedly issued on June 11, 1978 and January 16, 1981, see *Mabini*, (Manila, Sept. 11, 1981).

Mabini is a newsletter published by a group of lawyers who defend individuals prosecuted by the Marcos government. It is derived from Apolinario Mabini, a Filipino hero in the 19th century who was considered "the brains of the Philippine Revolution." See also "Rule by Decree Live On," *Far Eastern Economic Review* (11 Sept. 1981).

[18]"Over a Cup of Coffee," *Daily Express* (Manila, 29 Jan. 1982).

APPENDIX A

SUPPLEMENTAL DATA ON THE CASES

In re Castioni[1] was the first judicial attempt by an Anglo-American court to give content to the term "political offense." Castioni was arrested in England after Switzerland sought his extradition for the murder of Rossi, a Swiss Government official in the canton of Ticino who was shot during an attack by a large group of citizens who had wanted a revision of the Constitution. They seized the arsenal and demanded admission to the palace. Rossi was one of two persons who refused to admit them. The crowd broke open the gate, and Castioni was among the first to enter. Rossi was shot; Castioni fled to England, and a request for his extradition was made by the Swiss Government. Judge Hawkins held that "fugitive criminals are not to be surrendered for extradition crimes, if those crimes were incidental to and formed part of political disturbances." Said the Judge:

> "I cannot help thinking that everybody knows there are many acts of a political character done without reason, done against all reason; but at the same time one cannot look too hardly and weigh in golden scales the acts of men hot in their political excitement. We know that in heat and heated blood men often do things which are against and contrary to reason; but none the less *an act of this description may be done for the purpose of furthering and in furtherance of a political rising*, even though it is an act which may be deplored and even lamented, as even cruel and against all reason, by those who can calmly reflect upon it after the battle is over. For the reasons I have expressed, I am of the opinion that this rule ought to be made absolute, and that the prisoner be discharged."

The case of *In re Meunier*,[2] decided four year later, came after a wave of anarchist violence that shocked Western Europe. Meunier was a French anarchist who had carried out two bomb attacks in France, one in a cafe resulting in two deaths, and a second one in an army barracks. He fled to England, and the French government sought his extradition. He invoked the political offense exception, claiming that the bombing of the barracks was an attempt to destroy government property. The English court held that since Meunier was not a member of an organized party attempting to replace the existing regime, the offense could not be regarded as political. Said Justice Cave:

> "In order to constitute an offense of a political character, there must be two or more parties in the State, seeking to impose the Government of their own choice on the other, and that, if the offense is committed by one side or the other in pursuance of that object, it is a political offense, otherwise not...The party with whom the accused is identified by the evidence...the party of anarchy, is the

> "enemy of all Governments." Their efforts are directed primarily against the general body of citizens...anarchist offenses are mainly directed against citizens."

The effect of the *Meunier* case was to limit the scope of the political offense exception laid down in *Castioni*, so that if the offender did not have a political goal and the impact of his act was upon the citizenry and not upon the government, his offense could not be considered political.

But in the 1950's, a case involving fugitives from a Communist country led the English court to widen the political offense exception. In the *Kolcynski* case,[3] seven Polish crewmen seized a fishing trawler, imprisoned the other members of the crew, wounded a party secretary responsible for the crew's political education, and brought the trawler into a port in England, where they sought asylum. Invoking the British-Polish Extradition Treaty of 1832, Poland sought the extradition of the offending crewmen for the crimes of coercion, illegal detention, physical injuries, and damage to property. The seven Polish sailors were not members of an organized political party seeking to replace an existing political order, nor would their acts have any impact on their Government. The Court, however, permitted the fugitives to introduce evidence showing that any trial in Poland, ostensibly for common offenses, would in fact result in punishment for the treasonous act of defecting to a capitalist country. In denying extradition, Justice Cassels concluded that extradition was being sought with a view towards punishing fugitives for political acts and therefore, the motives of the requesting State precluded surrender of the fugitives. Reaching the same result, Justice Goddard declared that a humanitarian perspective of changing world conditions required a more liberal interpretation of the *Castioni* case even where the offenses did not form part of an uprising or revolution. The evidence, in his view, showed that the crimes were political in that they were aimed at the Polish Government. The case demonstrates the flexibility of the English court and has been correctly viewed by scholars as offering hope to those who must commit crimes in order to flee their homeland.[4]

How about American courts? A review of American cases reveals that by and large, American judges have been greatly influenced by the *Castioni* test, with due sensitivity to individual liberties and to the realities of international politics.

In re Ezeta,[5] decided in 1894, was the first American case to hold that a court has jurisdiction to determine whether or not the charges against the accused are of a political character. General Antonio Ezeta, the former president of El Salvador, and four of his officers were accused of murder, robbery, and arson committed during their unsuccessful effort to suppress a revolution which ousted Ezeta and his brother in 1894. Their extradition was requested by the new government of El Salvador. The American court held that all but one of the alleged events were political since they occurred during a time of armed rebellion within the country. Although the U.S. had in the

meantime recognized the new Government which requested extradition, the court was apparently unhampered by ideological concerns or by the political complexion of the new Government. The judge, relying on the then-recently decided case of *Castioni*, concluded that "the crimes charged here, associated as they are with the actual conflict of armed forces, are of a political character...with the merits of this strife I have nothing to do."

In Ornelas v. Ruis,[6] decided less than two years after *Ezeta*, the U.S. Supreme Court had its first opportunity to take up the political offense exception. In 1892 a band of around 130 to 140 men, under Benevides, crossed the Rio Grande, attacked 40 Mexican soldiers, burned their barracks and houses, and took their horses and property. The group carried no flag and wore no uniform, except a red band on their hats; they remained on the Mexican side for about six hours and then returned to Texas. A U.S. Commissioner, acting as extradition magistrate, found the crimes extraditable under the U.S. Mexican Treaty of 1861. On petition for habeas corpus, the Federal district judge ruled that the offenses were political and, therefore, within the terms of the political offense exception. In reversing the District Court and allowing extradition, the Supreme Court held that the scope of review of the commissioner's finding of fact as to habeas corpus was narrow, and was limited to the question of whether he had no choice on the evidence but to conclude - in accordance with the Castioni test - "that this was a movement in aid of a political revolt, an insurrection, or a civil war." The Supreme Court noted that the Secretary of State had stated, in a letter to the Minister of Mexico, that the acts "were not such of a purely political character as to exclude them form the operation of this treaty...immediately after this occurrence, though no superior armed force of the Mexican government was in the vicinity to hinder their advance into the country, the bandits withdrew their booty across the river into Texas." It has been suggested[7] that the U.S. Supreme Court did not want to embarrass the Executive to whom friendly relations with Mexico were more important than "giving refuge to a few quasi-revolutionaries."

Half a century elapsed before the U.S. Supreme Court considered another case involving the political offense exception. The long *Artukovic* litigation,[8] like the *Kolczynski* case, shows the flexibility of the U.S. court dealing with the vicissitudes of world politics. Andriji Artukovic was the former Minister of Internal Affairs for the pro-Nazi Government of Croatia during World War II. He entered the U.S. illegally in 1948. In 1951, the Yugoslavian Government, invoking the U.S.-Serbia Extradition Treaty of 1901, sought the extradition of Artukovic. It was alleged that he had ordered the execution of around 200,000 inmates of concentration camps in Yugoslavia during the war. He was arrested in Los Angeles. While waiting for the extradition hearing, he filed a habeas corpus petition with a District Court in California. The writ was granted prior to any evidentiary hearing. The Ninth Circuit affirmed the District Court's decision. Both courts ruled that the offenses charged were political because they occurred during the German invasion of Yugoslavia and

subsequent establishment of the short-lived Government of Croatia. Apparently, the two courts did not consider whether the killing of so many people was actually in furtherance of a political objective and whether the fact that they were civilians made any difference. In any case, the Ninth Circuit's judgment was vacated by the U.S. Supreme Court and remanded to the District Court for evidentiary hearing on the extradition complaint. The hearing was held before a Federal magistrate. But extradition was again refused and Artukovic was ordered released because 1) there was insufficient evidence to establish probable cause of Artukovic's guilt; and 2) the offenses were political, having been committed during a struggle for power. This second conclusion has been criticized because it places great emphasis on the timing of the defendant's acts than on whether he, in any sense, furthered a political revolt. But what cannot be disputed is that at the time of the decision, the political climate in the United States had undergone a great change: the new Communist regime in Yugoslavia was not looked upon as a friend but as an antagonist.

In the 1959 case of *Ramos v. Diaz*,[9] Cuba, under Fidel Castro, requested the extradition of Diaz and Cruzata pursuant to the U.S.-Cuban Extradition Treaties of 1926 and 1904. The two were charged with murder of a prisoner whom they had been guarding shortly after the collapse of the Batista government. They were convicted of murder by the Castro government and were in prison serving their sentences before their escape to Florida. There was some evidence that the prisoner had tried to escape and that Cruzata, a corporal, and Diaz, a captain, shot him. During the hearing Diaz testified that they were members of the revolutionary movement, that the crime took place during the early days of the revolution, and that they held no personal grudge against the deceased. Extradition was denied - as Diaz's testimony was not rebutted - in light of the rule that "when the evidence before the court ends to show that the offenses against the accused are of a political character, the burden rests upon the demanding Government to prove the contrary." One may wonder whether extradition would have been denied if Batista had not been deposed and it was he, instead of Castro, who had asked for their extradition.

In the 1963 case of *In re Gonzales*,[10] the defendant participated in the torture and execution of two prisoners in a detention house, while acting "in a military or quasi-military capacity" during the regime of *Rafael Trujillo*. Defendant was ordered extradited, since the evidence showed there had been no disturbed political condition and no suggestion that he acted with essentially political motives or ends. The court relied on the *Castioni* test. In the 1960 case of *In re Mylonas*,[11] that test was not followed; instead, an extremely liberal interpretation was employed to prevent the surrender of an anti-Communist leader charged with embezzlement by Communist elements who had ousted him from power in the 1955 general elections in Greece. The charges were politically motivated and as *Mylonas* was in power - as City Councilman and as President of the Council - at the time of the alleged embezzlement, it could not be said that it was committed as part of an effort to overthrow the Government.

In the 1979 case of *Ziyad Abu Eain* (N.D. III. filed Dec. 18, 1979), it was held that the random and indiscriminate placing of a bomb by the Palestine Liberation Organization (PLO) member near a bus stop in Tiberias, Israel, killing two Jewish teenagers and maiming half a dozen others, was an isolated act of violence "so remote from the political objective that it could not have been believed by the offender to have a direct political effect on the Government of Israel." The crime was not considered as falling within the political offense exception. The defendant had argued that for the PLO to achieve its political purposes in a conflict between Israel and the people of Palestine, it was necessary for it to engage in acts of violence, such as bombing; that the bombings reflect the disparity between the PLO and the armed forces of Israel; and that since the PLO represents a guerilla movement in which one half of the Palestinian people are under a repressive occupation, the use of bombings in public places where military personnel congregate is a political and military necessity. The magistrate did not give importance to the argument, stating that "the evidence shows a random selection of the locale; a locale where a youth rally and a religious festival was being held...Defendant's argument seeks to lead to a conclusion that every Israeli present in Tiberias is in the military service of his country and therefore cannot be regarded as a civilian; that a violent act by a Palestinian Arab against an Israeli comes within the political offense exception." Accepting that the defendant was a member of the PLO organization and with motivation towards its objective,

> "there is nothing in the evidence which 'tends' to show that this act was directed in opposition to the State of Israel and that the crime furthered the cause of his group objective."

The defendant filed a petition for habeas corpus. In late 1981, the court affirmed the decision of the magistrate, holding that his act of random violence did not fall within the exception. As a result, Ziyad Abu Eain was extradited to Israel.

FOOTNOTES

[1](1891) 1 Q.B. 149.

[2](1894) 2 Q.B. 415.

[3](1955) 1 Q.B. 540, (1955) 1 All E.R. 31 (Q.B.).

[4]Lubet and Czaches, *supra note* 3, at 202; See also "Garcia-Mora: The Nature of Political Offenses: A Knotty Problem of Extradition Law," 48 Va. L. Rev. 1226, 1249, *Columbia Journal of International Law*, 18:3 (1980), 386.

[5]62 Fed. 972 (N.D. Cal. 1894).

[6]161 U.S. 502 (1896).

[7]See Valerie Epps, "The Validity of the Political Offender Exception in Extradition Treaties in Anglo-American Jurisprudence," 20 *Harvard International Law Journal*, 61,70.

[8]Artukovic v. Boyle, 107 F. Supp. 11 (S.D. Cal. 1952), rev'd sub nom. Ivancevic v. Artukovic, 211 F. 2d 565 (9th cir. 1954) cert. denied, 348 U.S. 818, rehearing denied, 348 U.S. 889 (1955), remanded, 140 F. Supp. 245 (S.D. Cal. 1956), aff'd sub nom. Karadzole v. Artukovic, 247 F. 2d 198 (9th cir. 1957), vacated and remanded, 355 U.S. 393 (1958) per curiam, surrender denied on remand sub nom. U.S. v. Artukovic, 170 F. Supp. 383 (S.D. Cal. 1959).

[9]179 F. Supp. 549 (S.D. Fla. 1959).

[10]217 F. Supp. 717 (S.D.N.Y. 1963). Judge Tyler admitted in a footnote that the political offender exception is applied "with greater liberality where the demanding state is a totalitarian regime seeking the extradition of one who has opposed that regime in the cause of freedom." Id. at 721, note 9.

[11]187 F. Supp. 716 (N.D. Ala. 1960).

APPENDIX B

EXTRADITION TREATY BETWEEN
THE UNITED STATES OF AMERICA
AND THE REPUBLIC OF THE PHILIPPINES

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

Desiring to provide for more effective cooperation between the two States in the repression of crime; and

Desiring to conclude a Treaty for the reciprocal extradition of offenders,

Have agreed as follows:

ARTICLE 1

Obligation to Extradite

1) The Contracting Parties agree to extradite to each other, subject to the provisions described in this Treaty, persons against whom the competent authorities of the Requesting State have issued a warrant of arrest for, or who have been found guilty of, an extraditable offense committed within its territory.

2) With respect to an offense committed outside the territory of the Requesting State, the Requested State shall grant extradition, subject to the provisions of this Treaty, if:

a) its laws would provide for the punishment of such an offense in similar circumstances; or

b) the person sought is a national of the Requesting State, and that State has jurisdiction to try that person.

ARTICLE 2

Extraditable Offenses

1) Extraditable offenses under this Treaty are:

a) offenses referred to or described in the Appendix to this Treaty and punishable under the laws of both Contracting Parties; or

b) offenses, whether listed in the Appendix to this

Treaty or not, provided the offense is punishable under the Federal laws of the United States and the laws of the Republic of the Philippines.

2) For the purpose of this Article, it shall not matter:

a) whether or not the laws of the Contracting Parties place the offense within the same category of offenses or denominate the offense by the same terminology; or

b) whether or not the offense is one for which United States federal law requires proof of 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 the United States federal court.

3) Extradition shall be granted in respect of an extraditable offense only if the possible penalty under the laws of both Contracting Parties is deprivation of liberty for a period exceeding one year or death. However, when the request for extradition relates to a person who has been convicted and sentenced, extradition shall be granted only if the duration of the penalty or aggregate of penalties still be served amount to at least six months or death.

4) Subject to the conditions set out in paragraphs 1, 2, and 3, extradition shall also be granted for conspiring in, attempting, or participating in, the commission of an offense, or for being an accessory after the fact.

5) When extradition has been granted with respect to an extraditable offense, it shall also be granted in respect to any other offense specified in the extradition request that meets all other requirements for extradition except for the periods of deprivation of liberty set forth in paragraph 3 of this Article.

ARTICLE 3

Political and Military Offenses

1) Extradition shall not be granted if the offense for which it is requested is a political offense or is connected with a political offense. Nor shall extradition be granted if there are substantial grounds for believing that the request for extradition has, in fact, been made with a view to try or punish the person sought for such an offense. If any question arises as to the application of this paragraph, it shall be the responsibility of the Executive Authority of the Requested State to decide.

2) For the purpose of this Treaty, the following offenses shall not be deemed to be the offenses within the meaning of paragraph 1:

a) the murder or other willful crime against the life or physical integrity of a Head of State or Head of Government of one of the Contracting Parties or of a member of his family;

b) an offense with respect to which either Contracting Party has the obligation to prosecute or extradite by reason of a multilateral international agreement.

3) Extradition also shall not be granted for military offenses which are not punishable under non-military penal legislation. It shall be the responsibility of the Executive Authorities of the Contracting Parties to decide any question arising under this paragraph.

ARTICLE 4

Prior Jeopardy for the Same Offense

1) Extradition shall not be granted when the person sought has been tried and convicted or acquitted by the Requested State for the offense for which extradition is requested.

2) Extradition shall not be precluded by the fact that the competent authorities of 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 initiated against the person sought.

ARTICLE 5

Capital Punishment

When the offense for which extradition is requested is punishable by death under the laws of the Requesting State, and the laws of the Requested State do not permit such punishment for that offense, extradition may be refused unless the Requesting State furnishes such assurances as the Requested State considers sufficient that if the death penalty is imposed, it will not be executed.

ARTICLE 6

Extraordinary or *Ad Hoc* Tribunals

1) An extradited person shall not be tried by an extraordinary or *ad hoc* tribunal in the Requesting State.

2) Extradition shall not be granted for the enforcement of a penalty imposed, or detention ordered, by an extraordinary or *ad hoc* tribunal.

3) It shall be the responsibility of the Executive Authorities of the Contracting Parties to decide any question arising under this Article.

ARTICLE 7

Lapse of Time

Extradition shall not be granted when the prosecution or the enforcement of the penalty for the offense for which extradition has been sought has become barred by lapse of time according to the laws of the Requesting State.

ARTICLE 8

Extradition of Nationals

1) Neither of the Contracting Parties shall be bound to extradite its own nationals. The competent Executive Authority of the Requested State, however, shall have the power to grant the extradition of its own nationals if, in its discretion, this is deemed proper to do.

2) The Requested State shall undertake all available legal measures to suspend naturalization proceedings in respect of the person sought until a decision on the request for his extradition and, if that request is granted, until his surrender.

3) If the Requested State does not extradite its own national, it shall submit the case to its competent authorities in order that appropriate proceedings may be taken. If the Requested State requires additional documents or evidence, such documents or evidence shall be submitted without charge to that State. The Requesting State shall be informed of any action taken.

ARTICLE 9

Extradition Procedures and Required Documents

1) The request for extradition shall be made through the diplomatic channel.

2) The request for extradition shall be accompanied by:

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

b) a statement of the facts of the case, including, if possible, the time and location of the crime;

c) the provisions of the law describing the essential elements and the designation of the offense for which extradition is requested;

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

e) the provisions of the law describing any time limit on the prosecution or the execution of punishment for the offense.

3) In addition to the documents referred to in paragraph 2, a request for extradition relating to a person sought for prosecution shall be accompanied by a warrant of arrest issued by a judge or other judicial authority of the Requesting State and such evidence as, according to the law of the Requested State, would provide probable cause for his arrest and committal for trial if the offense had been committed there, including evidence providing probable cause to believe that the person requested is the person to whom the warrant of arrest refers.

4) In addition to those items referred to in paragraph 2, a request for extradition relating to a convicted person shall be accompanied by:

a) a copy of the judgment of conviction rendered by a court of the Requesting State; and

b) evidence proving that the person sought is the person to whom the conviction refers.

If the person has been convicted but not sentenced, the request for extradition shall also be accompanied by evidence to that effect. If the convicted person has been sentenced, the request for extradition shall also be accompanied by a copy of the sentence imposed and a statement showing to what extent the sentence has not been carried out.

5) Documents transmitted through the diplomatic channel shall be admissible in extradition proceedings in the Requested State without further certification, authentication or other legalization.

ARTICLE 10

Additional Evidence

If the Executive Authority of the Requested State considers that the evidence furnished in support of the request for the extradition is not sufficient to fulfill the requirements of this Treaty, that State shall request the submission of necessary additional evidence. The Requested State may set a time limit for the submission of such evidence, and, upon the Requesting State's application, for which reasons shall be given, may grant a reasonable extension of the time limit. If such evidence is not received within the period specified or the reasonable extension of the time limit granted by the Requested State, that person may be released from custody. However, such release shall not bar either the continued consideration of the request on the basis of the supplemented documents, or, if a final decision has already been taken, the submission of a new request for the same offense. In such a case, it shall be sufficient if reference is made in the new request to the supporting documents already submitted, provided these documents will be available at the extradition proceedings.

ARTICLE 11

Provisional Arrest

1) In case of urgency, either Contracting Party may request the provisional arrest of any accused or convicted person. Application for provisional arrest shall be made through the diplomatic channel.

2) The application shall contain: a description of the person sought; the location of that person, if known, a brief statement of the facts of the case including, if possible, the time and location of the offense; a statement of the existence of a warrant of arrest as mentioned in Article 9 or a judgment of conviction against that person; and a statement that a request for extradition of the person sought will follow.

3) On receipt of such an application the Requested State shall take the appropriate steps to secure the arrest of the person sought. The Requesting State shall be promptly notified of the result of its application.

4) Provisional arrest shall not be terminated unless, within a period of 60 days after the apprehension of the person sought, the Executive Authority of the Requested State has not received the formal request for extradition and the supporting documents required by Article 9.

5) The termination of provisional arrest pursuant to paragraph 4 of this Article shall not prejudice the extradition of the person

sought if the extradition request and the supporting documents mentioned in Article 9 are delivered at a later date.

ARTICLE 12

Decision and Surrender

1) The Requested State shall promptly communicate through the diplomatic channel to the Requesting State its decision on the request for extradition.

2) The Requested State shall provide reasons for any partial or complete rejection of the request for extradition.

3) If the extradition has been granted, surrender of the person sought shall take place within such time as may be prescribed by the law of the Requested State. The competent authorities of the Contracting Parties shall agree on the time and place of the surrender of the person sought. If, however, that person is not removed from the territory of the Requested State within the prescribed time, that person may be set at liberty and the Requested State may subsequently refuse extradition for the same offense.

ARTICLE 13

Delayed Decision and Temporary Surrender

If the extradition request is granted in the case of a person who is being prosecuted or is serving a sentence in the territory of the Requested State for a different offense, the Requested State may:

a) Defer the surrender of the person sought until the conclusion of proceedings against that person, or the full execution of any punishment that may be or may have been imposed; or

b) Temporarily surrender the person sought to the Requesting State for the purpose of prosecution. The person so surrendered shall be kept in custody while 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 mutual agreement of the Contracting Parties.

ARTICLE 14

Requests for Extradition Made by Third State

The Executive Authority of the Requested State, upon receiving requests from the other Contracting Party and from one or more third States for the extradition of the same person, either for the same offense or for different offenses, shall determine to which State it will extradite that person. In making its decision, it shall consider all relevant factors, including but not limited to:

a) the State in which the offense was committed;

b) in cases involving different offenses, the State seeking the individual for the offense which is punishable by the most severe penalty in accordance with the laws of the Requested State.

c) in cases involving different offenses that the Requested State considers of equal gravity, the order in which requests were received from the Requesting States;

d) the nationality of the offender.

ARTICLE 15

Rule of Speciality

1) A person extradited under the Treaty shall not be detained, tried or punished in the territory of the Requesting State for an offense other than that for which extradition has been granted, nor be extradited by that State to a third State, unless:

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

b) he does not leave the territory of the Requesting State within 30 days after being free to do so; or

c) the Executive Authority of the Requested State consents to that person's detention, trial, or punishment for another offense, or to extradition to a third State. For purposes of this subparagraph, the Requested State may require the submission of the documents mentioned in Article 9 and/or the written views of the extradited person with respect to the offense concerned.

These conditions shall not apply to offenses committed after the extradition.

2) If the offense for which the person was extradited is legally altered in the course of proceedings, that person may be prosecuted or sentenced provided:

a) the offense under its new legal description is based on the same set of facts contained in the extradition request and its supporting documents; and

b) any sentence imposed does not exceed that provided for the offense for which that person was extradited.

ARTICLE 16

Simplified Extradition

If the person sought irrevocably agrees in writing to extradition after personally being advised by a judge or competent magistrate of his right to formal extradition proceedings and the protection afforded by them, the Requested State may grant extradition without formal extradition proceedings. Extradition pursuant to this Article shall be subject to Article 15.

ARTICLE 17

Surrender of Articles, Instruments, Objects and Documents

1) To the extent permitted under the laws of the Requested State, all articles, instruments, objects of value, documents or other evidence relating to the offense shall be seized and surrendered upon the granting of the extradition. The property mentioned in this Article shall be handed over even when extradition cannot be effected due to the death, disappearance, or escape of the person sought. The rights of third parties in such property shall be duly respected.

2) The Requested State may condition the surrender of the property upon satisfactory assurance from the Requesting State that the property will be returned to the Requested State as soon as practicable.

ARTICLE 18

Transit

1) Either Contracting Party may authorize transit through its territory of a person surrendered to the other by a third State. The Contracting Party requesting transit shall provide the transit State, through diplomatic channels, with a request for transit which shall contain a description of the person being transited and a brief statement of the facts of the case. No such authorization is required where air transportation is used and no landing is scheduled on the territory of the other Contracting Party.

2) If an unscheduled landing on the territory of the other Contracting Party occurs, transit shall be subject to the provisions of paragraph 1 of this Article. That Contracting Party may detain the person to be transitted for a period of 96 hours while awaiting the request for transit.

ARTICLE 19

Expenses and Representation

1) Expenses related to the transportation of the person sought to the Requesting State shall be paid by the Requesting State. All other expenses related to the extradition request and proceedings shall be borne by the Requested State.

2) The Requested State shall provide for representation of the Requesting State in any proceedings arising out of a request for extradition.

3) No pecuniary claim, arising out of the arrest, detention, examination and surrender of persons sought under the terms of this Treaty, shall be made by the Requested State against the Requesting State.

ARTICLE 20

Language

All documents submitted by either Contracting Party shall be in the English language, or shall be translated into the English language, by the Requesting State.

ARTICLE 21

Scope of Application

This Treaty shall apply to offenses encompassed by Article 2 committed before as well as after the date this Treaty enters into force.

ARTICLE 22

Ratification and Entry into Force

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

APPENDIX

SCHEDULE OF OFFENSES

1) Murder; assault with intent to commit murder.

2) Manslaughter, homicide, parricide and infanticide.

3) Malicious wounding; inflicting grievous bodily harm or physical injuries including mutilation.

4) Rape; indecent assault.

5) Unlawful sexual acts with or upon children under the age specified by the laws of the Contracting Parties.

6) Procuration, white slavery including corruption or minors.

7) Bigamy.

8) Willful abandonment of a minor or other dependent person when that minor or other dependent person is or is likely to be injured or his life endangered.

9) Kidnapping, abduction; false imprisonment; or any other illegal detention.

10) Extortion, blackmail, threat, and coercion.

11) Robbery; burglary; larceny or theft.

12) Offenses relating to slavery or involuntary servitude.

13) Fraud, which includes obtaining property, money or valuable securities by false pretenses or by defrauding the public or any person by deceit or falsehood or any fraudulent means, whether such deceit or falsehood or fraudulent means would or would not amount to a false pretense.

14) Embezzlement or swindling; breach of trust; graft; malversation of public funds or property.

15) Bribery, including soliciting, offering or accepting.

16) Offenses against the laws relating to counterfeiting and forgery.

17) Receiving or possessing any money, valuable securities or other property knowing the same to have been unlawfully obtained.

18) Arson.

19) Malicious injury to property.

20) Offenses endangering public safety through explosion, flooding or other destructive means.

21) Offenses against laws relating to piracy, as defined by statute or by the law of nations; mutiny or revolt on board an aircraft or vessel against the authority of the captain or commander of such aircraft or vessel.

22) Unlawful seizure of an aircraft or vehicle.

23) Malicious acts done with intent to endanger the safety of persons traveling upon a railway, or in any aircraft or vessel or bus or other means of transportation.

24) Offenses against the laws relating to firearms, ammunition, explosives, incendiary devices, nuclear materials or nuclear devices, and other prohibited weapons.

25) Offenses against the laws relating to the traffic in, possession or production or manufacture of, narcotic drugs, cannabis, hallucinogenic drugs, cocaine and its derivatives, and other substances which produce physical or psychological dependence.

26) Offenses against public health, such as the illicit manufacture of or traffic in chemical products or substances injurious to health.

27) Offenses against the laws relating to importation, exportation or transit of goods, persons, articles, or merchandise, including violations of the customs laws.

28) Offenses relating to willful evasion of taxes and duties.

29) Offenses relating to false testimony, perjury, or subornation of perjury.

30) Making a false statement to a government agency or official.

31) Offenses against the laws relating to the administration or obstruction of justice.

32) Offenses against the laws relating to regulation of public administration or abuse of public office.

33) Offenses against the laws relating to the control of companies, corporations, or other juridical persons.

34) Offenses against the laws relating to control of private monopoly or unfair competition.

35) Offenses against the national economy, that is, offenses relating to basic commodities, or to securities and similar documents, including their issuance, registry, commercialization, trading or sale.

36) Offenses against the laws relating to bankruptcy or fraudulent insolvency.

37) Offenses against the laws relating to international trade and transfers of funds.

38) Leading, directing or inciting a riot.

39) Offenses relating to gambling.

40) Assault or threat upon a public official relating to the execution of his duty.

41) Escape and other offenses relating to evasion of sentence.

42) Offenses with respect to which both Contracting Parties have the obligation to prosecute by reason of a multilateral international agreement.

2) This Treaty shall enter into force 30 days after the exchange of the instruments of ratification.

ARTICLE 23

Denunciation

Either Contracting Party may terminate this Treaty at any time by giving written notice to the other Party, and the termination shall be effective one year after the date of receipt of such notice.

IN WITNESS WHEREOF, the undersigned duly authorized thereto, have signed this Treaty.

DONE in duplicate at Washington this 27th day of November, 1981.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

(Daniel W. McGovern)

FOR THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES:

(Eduardo Z. Romualdez)