

practice or areas of expertise. We have included in your kit a listing of major activities and conferences that will take place next year, notably those under the auspices of The Hague Conference on Private International Law and the UNCITRAL. If anyone is interested to join and help us out in these conferences, you are welcome. Of course, we are hoping that you can find your way to those conferences. But certainly, we would like to have an inclusive process as much as possible, which is why we are having this Colloquium.

I would like to conclude these remarks by reiterating our thanks to all of you for joining us this morning and allowing me to share these thoughts. As an advocate and student of law, I have much to learn and I look forward to the sessions ahead.

ATTY. WAHAB-MANANTAN: Thank you Assistant Secretary Malaya.

Proceeding now to the heart of our program, and to get us started with our first session on International Legal and Judicial Cooperation, we are honored to introduce our first main presenter, Chief State Counsel Ricardo Paras III from the Department of Justice.

SESSION I: INTERNATIONAL LEGAL AND JUDICIAL COOPERATION

ATTY. WAHAB-MANANTAN: Chief State Counsel Paras has been in government service for thirty-two years. He started as Trial Attorney and Solicitor at the Office of the Solicitor-General, before moving to the Department of Justice (DOJ) as State Counsel in 1987. He was appointed as Assistant Secretary in 1988 and served as such until 2004. He served as Undersecretary for six months, before he was appointed as Chief State Counsel in 2004.

He received his law degree from the Ateneo Law School in 1982 and taught Public International Law at the Lyceum College of Law for four years. And he belongs to a family of lawyers and jurists that we all know. His father was the late Atty. Ricardo Paras Jr., while his grandfather was the late Chief Justice of the Supreme Court of the Philippines, Ricardo M. Paras. His late uncle, Supreme

Court Justice Edgardo Paras is a known Law Professor and author of law books in Civil and International Law.

Colleagues, join us in welcoming Chief State Counsel Paras of the DOJ.

**EXTRADITION, MUTUAL LEGAL ASSISTANCE AND
TRANSFER OF SENTENCED PERSONS AGREEMENTS**
CHIEF STATE COUNSEL RICARDO V. PARAS III

The Honorable Justice Adolfo Azcuna, Undersecretary Dondi Teehankee, Ambassador Claro Cristobal, and my friend, Ambassador Ed Malaya. Deans Sedfrey Candelaria and Rodel Talon. Ladies and gentlemen, good morning.

INTRODUCTION

Before the celebrated extradition case of former Congressman Mark Jimenez, only a few lawyers knew that we had an extradition law and that the Philippines has in fact concluded a number of extradition treaties. In fact, when I was in Vienna last November 6-11, for the 5th Conference of State Parties to the UN Convention Against Corruption, matters pertaining to the principles of dual criminality and specialty in extradition were taken up, which incidentally was the subject of a question in the recent bar examination in Political Law. The members of the Philippine delegation were surprised that I was able to readily provide the answers. Well, I said, extradition and legal assistance are part of my daily chores at the Department.

Extradition is not a new concept of international cooperation, as it dates as far back as 1280 B.C. when Ramses II of Egypt and Prince Hattusili III of the Hittites concluded a peace treaty providing for the exchange of criminals of one nation found in the territory of another. The same is true with mutual legal assistance to each other. Countries have long been providing legal assistance to each other. However, it was mostly done through informal channels and between the law enforcement authorities of two States. As for transfer of sentenced persons, this is still relatively new to us.

Extradition, mutual legal assistance in criminal matters and transfer of sentenced persons are just three of the effective tools of international legal cooperation. I will not discuss judicial cooperation, which is included in the title

of this session, as the same pertains to the judicial branch of our government, although the implementation of certain types of international legal cooperation necessarily involves judicial process.

I. Extradition

Extradition is the surrender, upon request of a State, of an accused or convicted person, found in the territory of another state.

Extradition process in the Philippines is primarily governed by Presidential Decree (P.D.) No. 1069 or the Philippine Extradition Law, the applicable extradition treaty, and if not inconsistent with the summary nature of extradition proceedings, also the Rules of Court.

Unlike other jurisdictions which allow extradition on the basis of national legislation, treaty or reciprocity, the Philippines, as provided under P.D. No. 1069, may grant extradition only on the basis of a treaty or convention. Allowing extradition on the basis of law or reciprocity is one of the policy issues confronting the Department of Justice as it works on the amendment of P.D. No. 1069.

At present, we have extradition treaties with 14 countries, namely: Australia, Canada, China, Hong Kong Special Administrative Region, India, Indonesia, Korea, Micronesia, Spain, Switzerland, Thailand, UK, US, and the most recent one, with Russia, which was signed in October 2017 on the occasion of the 31st ASEAN Summit in Manila.

The Philippines is also a State Party to multilateral treaties containing the so-called mini-extradition provisions, and this includes the UN Convention Against Corruption (UNCAC), the UN Convention against Transnational Organized Crime (UNTOC), the ASEAN Convention on Counter-Terrorism (ACCT), and the ASEAN Convention Against Trafficking in Persons (ACTIP).

While both UNCAC and UNTOC can serve as legal basis for making a request for extradition, the Philippines cannot however utilize the same as legal basis because a request for extradition under UNCAC may be granted even if the dual criminality requirement is not met. Our extradition law on the other hand, requires dual criminality; hence, the Philippines entered a declaration to UNCAC whereby the latter Convention cannot be made a basis for a request for extradition. Likewise, UNTOC cannot be a basis for a request for extradition

because Section 5(A) of the Convention requires a declaration from a State that it will take the Convention as the legal basis for cooperation on extradition with the other State Parties of the Convention. The Philippines did not make such declaration when we acceded to the Convention.

We may therefore have to look into our accession to other multilateral treaties allowing extradition, as being a State Party thereto may not be a sufficient legal basis for making or granting extradition request.

The benefit of extradition treaties for ordinary Filipinos is that if they are victims of crimes, the perpetrators of these crimes cannot evade prosecution by fleeing from the Philippines, because they can be brought back here to face trial, if they are found in the territory of a treaty partner.

II. Mutual Legal Assistance Treaty in Criminal Matters

Mutual legal assistance is the formal process of seeking legal assistance to and from a foreign government in criminal and related proceedings. It is a formal process of intergovernmental legal cooperation in the investigation, prosecution and punishment of criminal offenders. I mention here that it is a formal process because it has to be distinguished from the informal process of cooperation such as law enforcement-to-law enforcement cooperation.

Mutual Legal Assistance as a tool of international legal cooperation cannot be utilized in administrative or civil proceedings or actions unless the civil action is closely linked or related to a criminal proceeding. An example of this is the request for assistance submitted by the Philippines to the United States to recover the proceeds of corruption of two former generals of the Armed Forces of the Philippines. The nature of the action subject of the request for assistance was a civil action for forfeiture, not a criminal proceeding. The request must be able to establish the relation of a civil action to a criminal proceeding, such as graft and corruption.

Bangladesh also recently requested us for legal assistance under UNTOC to recover US\$15 million surrendered by Kim Wong, which was part of the US\$81 million bank heist from the Bangladesh Central Bank through the hacking of the bank's SWIFT code. We successfully filed a third-party claim in the civil forfeiture proceedings and recovered the said amount for them. What was

recovered was only a small part of the amount stolen, and recovery of the remaining amount may take considerable time.

Please note that in making a request for legal assistance, the law enforcement agency or prosecution office initiating the request has to be stated and the US does not consider a Senate or Blue Ribbon investigation to be a proper basis for a request, as an investigation conducted in aid of legislation or investigation by a congressional committee, such as the Senate Blue Ribbon Committee, is not the investigation or criminal proceeding contemplated under MLATs.

It must be emphasized that there is no surrender of fugitives in the Mutual Legal Assistance process, as it is mainly used in gathering evidence to assist the investigation or prosecution that is being conducted in the requesting State.

Unlike extradition, the Philippines does not have a stand-alone legislation on mutual legal assistance in criminal matters. It is able to provide assistance on the basis of a treaty, law or reciprocity.

At present, the Philippines has MLATs with nine (9) countries, namely: Australia, China, Hong Kong, South Korea, Russia, Spain, Switzerland, UK and the US. It also has a regional MLAT with the other nine ASEAN Member States. These MLATs allow a wide range of assistance, from the provision of documents, taking of evidence or obtaining statements of witnesses, effecting service of documents, executing requests for search and seizure, ocular inspections, tracing, forfeiture and confiscation of property derived from the commission of an offense, to appearance of witnesses before the courts of the requesting state. The UNCAC, UNTOC, ACCT and ACTIP contain provisions on mutual legal assistance; hence, it can be the basis for a request for assistance.

The Philippines will also be able to seek or provide assistance on the basis of reciprocity. For this, an undertaking has to be made by the requesting State that it would provide the same type of cooperation to the requested State. This is quite similar to the request for letter rogatory under our Rules of Court. However, a request for assistance may be made even at the investigation stage, when law enforcement authorities are still gathering evidence or determining the identity of the possible perpetrators which is not so in the case of a letter rogatory as it requires that there be a case already filed in court.

A request for assistance requiring compulsory processes or court intervention for its execution may not be made on the basis of reciprocity, as the request of this nature may only be made on the basis of a treaty or a law, such as Republic Act No. 9160, as amended (“Anti-Money Laundering Act of 2001”).

There are challenges that we face in the implementation of MLATs, one of which is the lack of rules on hearing via videoconference. Recently, a request for assistance submitted by way of letter rogatory was not implemented by a Philippine court because the procedure sought in taking the statement of the witness was to be done via videoconference. There are a lot of issues to be considered in taking a statement of a witness in the Philippines via videoconference. These include the costs, the laws and rules to be observed, rights to be invoked by the witness, etc. Perhaps this is one aspect of international legal cooperation that needs to be addressed.

We also filed a request for legal assistance with Indonesia to take the deposition of Mary Jane Veloso inside the Yogyakarta Jail in Indonesia in the presence of the judge hearing the case against Veloso’s recruiters in Santo Domingo, Nueva Ecija, the recruiters Sergio and Lacanilao.

For ordinary Filipinos, the benefit of being able to request for legal assistance from other States, be it under a treaty or based on reciprocity, is that crimes committed against them need not necessarily be left without redress if the evidences for these crimes are found in other States. The Philippines can obtain this evidence from an MLAT treaty partner or based on reciprocity.

III. Transfer of Sentenced Persons Agreement (TSPA)

When all the frenzy and media hype has died down, with the conviction of the accused, it is now our responsibility to provide for the effective rehabilitation of the offender, so that he would go back to the fold of the law and he is prevented from committing further transgressions of the law.

Thus, transfer of sentenced persons or transfer of foreign prisoners is one of the measures of strengthening international legal cooperation in the field of crime prevention and criminal justice reform. It allows a person convicted and serving a final sentence in a foreign land to serve his remaining sentence in his or her country of nationality or residence, where his or her rehabilitation may be properly monitored and within the reach of his family and relatives.

The Philippines does not have a law on transfer of sentenced persons. In the absence of such domestic law, transfer of sentenced persons may be carried out through the bilateral agreements of the Philippines with other countries. The transfer of sentenced persons (TSPA) would serve as the legal framework for the transfer of sentenced persons to their countries of nationality in order to serve the remaining portion of their sentence.

At present, the Philippines has TSPAs with Canada, Hong Kong, Spain and Thailand. Only the TSPA with Hong Kong, Spain and Thailand are enforced, as the TSPA with Canada has yet to be given Senate concurrence.

The Philippines is not a party of the Strasbourg Convention on Transfer of Sentenced Persons, for the main reason that its accession thereto might violate the constitutional provision that only the Philippine President can grant pardon, amnesty and commutation of sentence. The Strasbourg Convention allows the State to which the Philippines has transferred a sentenced person to grant pardon, amnesty or commutation of sentence, contrary to the Constitution.

On December 6, 2010, the Department of Justice issued a Circular prescribing the rules on the implementation of the TSPA. The Circular serves as our guide in the implementation of our TSPAs.

The TSPAs and DOJ Circular provide conditions for the transfer, and these include dual criminality, nationality or residence of the sentenced person, finality of judgment, consents of the sentencing State, administering State, and the sentenced person or the so-called three-fold consent, minimum service of sentence, and payment of fines, court costs, and civil indemnities.

Overseas Filipino Workers (OFWs) may have brushes with the law of their host country and may land in jail. The rehabilitation of foreign prisoners may be more effective if done in their country of nationality or residence as they would be close to their families and friends, speak the same language and observe the same customs and traditions as the people working on their rehabilitation. Hence, for OFWs who are in prison abroad, TSPAs benefit them immensely in this regard.

I have to stress, however, that TSPA is not intended to give special treatment to foreign detainees. It is only intended to afford foreign prisoners the opportunity to serve their sentence in their country of nationality or residence.

Foreign prisoners may, in fact, choose not to serve their sentence in their country of nationality or residence.

IV. Recommendations

The following are my recommendations.

First, with ten percent (10%) of our population abroad in order to earn a living and being exposed to falling prey to criminal elements, I believe we should include in our criminal statutes provisions on their extra-territorial application, especially under the Passive Personality Principle, which recognizes that a sovereign can adopt laws that apply to foreign nationals who commit crimes against the sovereign's nationals outside the sovereign's territory. Our amended Anti-Trafficking Law has such extraterritorial application already. In doing so, we can resort to tools of international cooperation like extradition to extradite the accused to the Philippines for prosecution and service of sentence.

Second, our Extradition Law, P.D. No. 1069, is antiquated and outmoded. I suggest that it be amended or repealed and that we consider allowing extradition on the basis of reciprocity. However, I understand the pros and cons will have to be discussed first as what would work best because reciprocity may not be as strong a basis for extradition as under a treaty because the other party can give several reasons to refuse extradition on the basis of reciprocity.

Third, we should likewise retract our declaration in our accession to UNCAC and UNTOC and allow these multilateral conventions to serve as basis for extradition. The revocation of the declaration does not make it automatically obligatory on our part to extradite since we still have to be convinced that the human rights of the potential extraditee shall be respected much in the same way that we have laws which grant complimentary protection, similar to non-refoulement under the Anti-Torture and the Anti-Disappearance Acts. It is also to be noted that the full implementation of UNCAC would only be possible if the Philippine Extradition Law is amended to include all relevant provisions on extradition because both UNCAC and P.D. No. 1069 lack a lot of important provisions on extradition, such as when a requested State Party may consider a request seeking the extradition of its national. The alternative to this is to make our UNCAC declaration to include all the important provisions required for its full implementation.

Fourth, we should adopt our own law on mutual legal assistance to widen the scope of request for investigations and aid prosecution in cases.

And, finally, on TSPA, we have always encountered deadlocks in negotiations on the authority to grant pardon or executive clemency as we have to abide by the constitutional provision, which vests solely in the President the exercise of such power. To make our stand more palatable in the negotiating table, I suggest that we study a counter proposal of allowing the other State to grant pardon or executive clemency, provided that it be concurred in by the authority/ authorities of the Philippines. If the result of the study is to consider such a counter proposal, I would propose to the Office of the President such a course of action.

Well, this ends my presentation and thank you very much.

ATTY. WAHAB-MANANTAN: Thank you very much, Sir for that insightful presentation.

**INTERNATIONAL JUDICIAL COOPERATION
THROUGH THE HAGUE CONFERENCE ON PRIVATE
INTERNATIONAL LAW (HCCH) CONVENTIONS**
PROF. ELIZABETH AGUILING-PANGALANGAN

Our second presenter is well-known to many of us as our professor in Persons and Family Relations, Private International Law, Contracts, Agency, Partnership, Children's Rights and Legal Ethics at the U.P. College of Law. Currently, she is the Director of the U.P. Institute of Human Rights and she is the author several reference textbooks, namely: *Marriage and Unmarried Cohabitations: The Rights of Husbands, Wives and Lovers* and *Not Bone of My Bone But Still My Own: A Treatise on the Philippine Law on Adoption*, and the co-author of the *Conflict of Laws: Cases, Materials and Comments*.

Aside from being a prolific member of the academe, she has also been designated as the Philippine expert to the Experts' Group on Parentage/ Surrogacy Project for The Hague Conference on Private International Law and served as a Philippine delegate to the Special Commission on the Recognition and Enforcement of Foreign Judgments in 2016. She is also a member of the Philippine