

EXTRADITION

**Treaty Between the
UNITED STATES OF AMERICA
and MALAYSIA**

Signed at Kuala Lumpur August 3, 1995

with

Exchange of Notes



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

MALAYSIA

Extradition

*Treaty signed at Kuala Lumpur August 3, 1995,
with exchange of notes;
Transmitted by the President of the United States of America
to the Senate May 17, 1996 (Treaty Doc. 104-26,
104th Congress, 2d Session);
Reported favorably by the Senate Committee on Foreign Relations
July 24, 1996 (Senate Executive Report No. 104-30,
104th Congress, 2d Session);
Advice and consent to ratification by the Senate
August 2, 1996;
Ratified by the President November 4, 1996;
Exchange of instruments of ratification at Kuala Lumpur June 2, 1997;
Entered into force June 2, 1997.*

EXTRADITION TREATY

BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF MALAYSIA

TABLE OF CONTENTS

| | |
|------------|---|
| Article 1 | Obligation to Extradite |
| Article 2 | Extraditable Offenses |
| Article 3 | Nationality |
| Article 4 | Political and Military Offenses |
| Article 5 | Prior Prosecution |
| Article 6 | Capital Punishment |
| Article 7 | Extradition Procedures and Required Documents |
| Article 8 | Admissibility of Documents |
| Article 9 | Translation |
| Article 10 | Additional Documentation |
| Article 11 | Provisional Arrest |
| Article 12 | Decision and Surrender |
| Article 13 | Temporary and Deferred Surrender |
| Article 14 | Requests for Extradition Made By Several States |
| Article 15 | Seizure and Surrender of Property |
| Article 16 | Rule of Specialty |
| Article 17 | Waiver of Extradition Proceedings |
| Article 18 | Transit |
| Article 19 | Representation and Expenses |
| Article 20 | Consultation |
| Article 21 | Application |
| Article 22 | Entry into Force |
| Article 23 | Termination |

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

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

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

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

Have agreed as follows:

Article 1

Obligation to Extradite

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

Article 2

Extraditable Offenses

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

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

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

- (a) whether or not the laws in the Contracting States place the offense within the same category of offenses or describe the offense by the same terminology; or
- (b) whether or not the offense is one for which United States federal law requires the showing of such matters as interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States federal court.

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

5. If the offense has been committed outside the territory of the Requesting State, extradition shall be granted if the laws of the Requested State provide for punishment of an offense committed outside its territory in similar circumstances, and if the requirements of extradition under this Treaty are otherwise

met. If the laws of the Requested State do not so provide, the executive authority of the Requested State may, in its discretion, deny extradition.

Article 3

Nationality

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

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

Article 4

Political and Military Offenses

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

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

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

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

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

Article 5

Prior Prosecution

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

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

Article 6

Capital Punishment

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

Article 7

Extradition Procedures and Required Documents

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

2. All requests shall be supported by:
 - (a) documents, statements, or other types of information which describe the identity and probable location of the person sought;
 - (b) information describing the facts of the offense and the procedural history of the case;
 - (c) a statement of the provisions of the law describing the essential elements of the offense for which extradition is requested;
 - (d) a statement of the provisions of law describing the punishment for the offense; and
 - (e) the documents, statements, or other types of information or evidence specified in paragraph (3) or (4) of this Article, as applicable.

3. A request for extradition of a person who is sought for prosecution shall also be supported by:
 - (a) a copy of the warrant or order of arrest, if any, issued by a judge or other competent authority;
 - (b) a copy of the charging document; and

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

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

- (a) a copy of the judgment of conviction, or, if such copy is not available, a statement by a judicial authority that the person has been found guilty;
- (b) information establishing that the person sought is the person to whom the finding of guilt refers; and
- (c) a copy of the sentence imposed, if the person sought has been sentenced, and a statement establishing to what extent the sentence has been carried out.

Article 8

Admissibility of Documents

The warrant of arrest, or the judicial document establishing the existence of the conviction, and any deposition or statement or other evidence given on oath or affirmed before any competent

authority or any certified copy thereof, shall be received in evidence in any proceedings for extradition:

- (a) if authenticated in the case of a warrant by being signed, or in the case of any other original document by being certified by a judge, magistrate, or other competent authority of the Requesting State; or in the case of a copy by being certified to be a true copy of the original; and
- (b) where the Requesting State is the United States of America, by being sealed with the official seal of the Attorney General of the United States or some other Minister of State; and where the Requesting State is Malaysia, by being certified by the principal diplomatic or consular officer of the United States resident in Malaysia, as provided by the extradition laws of the United States; or
- (c) if it is authenticated in such other manner as may be permitted by the law of the Requested State.

Article 9

Translation

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

Article 10

Additional Documentation

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

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

Article 11

Provisional Arrest

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

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

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

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

4. A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of provisional arrest pursuant to this Treaty if the executive

authority of the Requested State has not received the formal request for extradition and the supporting documents required in Article 7. Upon the application of the Requesting State, this period may be extended for up to an additional thirty (30) days after the expiration of the sixty (60) day period.

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

Article 12

Decision and Surrender

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

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

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

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

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

Article 13

Temporary and Deferred Surrender

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

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

Article 14

Requests For Extradition Made By Several States

If the Requested State receives requests from the other Contracting State and from any other State or States for the extradition of the same person, either for the same offense or for a different offense, the executive authority of the Requested State shall determine to which State it will surrender the person. In making its decision, the Requested State shall consider all relevant factors, including but not limited to:

- (a) whether the requests were made pursuant to any treaties;
- (b) the place where each offense was committed;
- (c) the respective interests of the Requesting States;
- (d) the gravity of the offenses;

- (e) the nationality of the victim;
- (f) the possibility of further extradition between the Requesting States; and
- (g) the order in which the requests were received from the Requesting States.

Article 15

Seizure and Surrender of Property

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

Article 16

Rule of Specialty

1. A person extradited under this treaty may not be detained, tried, or punished in the Requesting State except for:
 - (a) the offense for which extradition has been granted or any lesser offense proved by the facts on which the first mentioned extradition was grounded;
 - (b) any offense committed after the extradition of the person; or
 - (c) an offense for which the executive authority of the Requested State has consented to the person's detention, trial, or punishment. For the purpose of this subparagraph:
 - (i) the Requested State may require the submission of the documents specified in Article 7; and
 - (ii) the person extradited may be detained by the Requesting State for ninety (90) days, or for such longer time as the Requested State may authorize, while the request is being processed.

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

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

- (a) that person leaves the territory of the Requesting State after extradition and voluntarily returns to it;
or
- (b) that person does not leave the territory of the Requesting State within fifteen (15) days of the day on which the person is free to leave.

Article 17

Waiver of Extradition Proceedings

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

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

Article 18

Transit

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

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

Article 19

Representation and Expenses

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

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

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

Article 20

Consultation

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

maintaining and improving procedures for the implementation of this Treaty.

Article 21

Application

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

Article 22

Entry Into Force

1. This Treaty, together with an exchange of notes interpreting certain portions of the Treaty, shall enter into force when both parties have notified each other through a further exchange of diplomatic notes of the completion of their respective requirements for entry into force.

2. Upon the entry into force of this Treaty, the Extradition Treaty between the United States of America and Great Britain, signed at London December 22, 1931, shall cease to have effect between the United States and Malaysia. Nevertheless, the prior treaty shall apply to any extradition proceedings in which the

extradition documents have already been submitted to the courts of the Requested State at the time this Treaty enters into force.

Article 23

Termination

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

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

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

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:



FOR THE GOVERNMENT OF
MALAYSIA





TRITI EKSTRADISI
ANTARA
KERAJAAN AMERIKA SYARIKAT
DAN
KERAJAAN MALAYSIA

SUSUNAN KANDUNGAN

| | |
|-------------------|---|
| Perkara 1 | Obligasi untuk Mengekstradisikan |
| Perkara 2 | Kesalahan Boleh Ekstradisi |
| Perkara 3 | Kerakyatan |
| Perkara 4 | Kesalahan Politik dan Tentera |
| Perkara 5 | Pendakwaan Terdahulu |
| Perkara 6 | Hukuman Bunuh |
| Perkara 7 | Prosedur Ekstradisi dan Dokumen Yang Dikehendaki |
| Perkara 8 | Kebolehterimaan Dokumen |
| Perkara 9 | Penterjemahan |
| Perkara 10 | Dokumentasi Tambahan |
| Perkara 11 | Penangkapan Sementara |
| Perkara 12 | Keputusan dan Penyerahan |
| Perkara 13 | Penyerahan Sementara dan Tertangguh |
| Perkara 14 | Permintaan Bagi Ekstradisi Yang Dibuat Oleh Beberapa Negara |
| Perkara 15 | Penyitaan dan Penyerahan Harta |
| Perkara 16 | Rukun Spesialiti |
| Perkara 17 | Penepian Prosiding Ekstradisi |
| Perkara 18 | Transit |
| Perkara 19 | Representasi dan Perbelanjaan |
| Perkara 20 | Perundingan |
| Perkara 21 | Pemakaian |
| Perkara 22 | Mula Berkuatkuasa |
| Perkara 23 | Penamatan |

Kerajaan Amerika Syarikat dan Kerajaan Malaysia

Mengingati semula Triti Ekstradisi yang terpakai antara Negara-Negara Pejanji, yang ditandatangani di London pada Disember 22, 1931;

Mengambil perhatian bahawa kedua-dua Kerajaan Amerika Syarikat dan Kerajaan Malaysia pada masa ini memakai terma-terma Triti itu; dan

Berhasrat mengadakan peruntukan bagi kerjasama yang lebih berkesan antara kedua-dua Negara untuk menumpaskan jenayah, dan, bagi maksud itu, membuat suatu triti baru bagi ekstradisi pesalah-pesalah;

Telah bersetuju seperti berikut:

Perkara 1

Obligasi untuk Mengekstradisikan

Negara-Negara Pejanji bersetuju mengekstradisikan kepada satu sama lain, menurut peruntukan Triti ini, orang yang telah dituduh atau disabitkan dengan suatu kesalahan boleh ekstradisi oleh pihak berkuasa di Negara Yang Meminta.

Perkara 2

Kesalahan Boleh Ekstradisi

1. Sesuatu kesalahan hendaklah menjadi kesalahan boleh ekstradisi jika kesalahan itu boleh dihukum di bawah undang-undang di kedua-dua Negara Pejanji dengan pelucutan kebebasan selama tempoh melebihi satu (1) tahun, atau oleh suatu penalti yang lebih keras.

2. Sesuatu kesalahan hendaklah juga menjadi kesalahan boleh ekstradisi jika kesalahan itu terdiri daripada suatu percubaan atau komplot untuk melakukan, membantu atau menyubahati, mengesyorkan, menyebabkan atau mendapatkan pelakuan, atau sebagai pensubahat sebelum atau selepas fakta itu kepada, apa-apa kesalahan yang diperihalkan dalam perenggan (1).

3. Bagi maksud Perkara ini, sesuatu kesalahan hendaklah menjadi kesalahan boleh ekstradisi:

- (a) sama ada atau tidak undang-undang di Negara-Negara Pejanji meletakkan kesalahan itu di dalam kategori kesalahan yang sama atau memperihalkan kesalahan itu dengan istilah yang sama; atau

(b) sama ada atau tidak kesalahan itu adalah satu yang baginya undang-undang persekutuan Amerika Syarikat menghendaki perkara itu ditunjukkan sebagai pengangkutan antara negeri, atau penggunaan mel atau kemudahan lain yang melibatkan perdagangan antara negeri atau negeri asing, perkara-perkara sedemikian cuma bagi maksud mewujudkan bidang kuasa dalam sesuatu mahkamah persekutuan Amerika Syarikat.

4. Jika Negara Yang Diminta berpendapat bahawa kesalahan itu dilakukan dalam bidang kuasanya, ia boleh menolak ekstradisi. Bagi maksud perenggan ini, bidang kuasa ertinya wilayah Negara Yang Diminta, ruang udara dan perairan wilayahnya, dan apa-apa vesel atau pesawat udara yang didaftarkan di Negara itu jika pesawat udara atau vesel itu berada di laut lepas atau dalam penerbangan. Jika ekstradisi ditolak menurut perenggan ini, Negara Yang Diminta hendaklah mengemukakan kes itu kepada pihak berkuasa kompetennya bagi maksud pendakwaan.

5. Jika kesalahan itu telah dilakukan di luar wilayah Negara Yang Meminta, ekstradisi hendaklah diberikan jika undang-undang Negara Yang Diminta memperuntukkan hukuman bagi sesuatu kesalahan yang dilakukan di luar wilayahnya dalam hal keadaan

yang sama, dan jika kehendak ekstradisi di bawah Triti ini sebaliknya dipenuhi. Jika undang-undang Negara Yang Diminta tidak memeruntukkan sedemikian, pihak berkuasa eksekutif Negara Yang Diminta boleh, mengikut budi bicaranya, menolak ekstradisi.

Perkara 3

Kerakyatan

1. Kedua-dua Negara Pejanji adalah tidak terikat untuk mengekstradisikan rakyatnya sendiri tetapi pihak berkuasa eksekutif Negara Yang Diminta hendaklah mempunyai kuasa untuk mengekstradisikan orang itu jika, mengikut budi bicaranya, disifatkan wajar berbuat demikian.
2. Jika ekstradisi tidak diberikan bagi sesuatu kesalahan menurut perenggan (1), Negara Yang Diminta hendaklah, atas permintaan Negara Yang Meminta dan jika undang-undang Negara Yang Diminta membenarkan sedemikian, mengemukakan kes itu kepada pihak berkuasanya yang kompeten bagi maksud pendakwaan.

Perkara 4

Kesalahan Politik dan Tentera

1. Ekstradisi tidak boleh diberikan jika kesalahan yang baginya ekstradisi diminta adalah suatu kesalahan politik.
2. Bagi maksud Triti ini, kesalahan yang berikut tidak boleh dianggapkan sebagai kesalahan politik:
 - (a) pembunuhan atau jenayah sengaja yang lain terhadap diri Ketua Negara salah satu Negara-Negara Pejanji, atau seseorang anggota keluarga Ketua Negara itu;
 - (b) sesuatu kesalahan yang baginya kedua-dua Negara Pejanji mempunyai obligasi menurut suatu perjanjian antarabangsa berbilang pihak untuk mengekstradisikan orang yang dikehendaki itu atau mengemukakan kes itu kepada pihak berkuasa mereka yang kompeten bagi keputusan tentang pendakwaan; atau
 - (c) sesuatu percubaan atau komplot untuk melakukan, atau membantu atau menyubahati, mengesyorkan atau mendapatkan pelakuan, atau sebagai pensubahat sebelum atau selepas fakta itu kepada, kesalahan itu.

3. Walau apa pun terma perenggan (2) Perkara ini, ekstradisi tidak boleh diberikan jika pihak berkuasa eksekutif Negara Yang Diminta menentukan bahawa permintaan itu bermotifkan politik.

4. Pihak berkuasa eksekutif Negara Yang Diminta boleh menolak ekstradisi bagi kesalahan di bawah undang-undang tentera yang bukannya kesalahan di bawah undang-undang jenayah biasa.

Perkara 5

Pendakwaan Terdahulu

1. Ekstradisi tidak boleh diberikan apabila orang yang dikehendaki itu telah disabitkan atau dibebaskan di Negara Yang Diminta bagi kesalahan yang baginya ekstradisi diminta.

2. Ekstradisi tidak boleh terhalang oleh sebab pihak berkuasa di Negara Yang Diminta telah memutuskan untuk tidak mendakwa orang yang dikehendaki itu bagi perbuatan yang baginya ekstradisi diminta, atau telah memutuskan untuk tidak meneruskan mana-mana prosiding jenayah yang telah dimulakan terhadap orang yang dikehendaki itu bagi perbuatan itu.

Perkara 6

Hukuman Bunuh

Dalam hal yang seseorang boleh tertakluk kepada hukuman bunuh di Negara Yang Meminta tetapi tidak akan tertakluk kepada hukuman bunuh di Negara Yang Diminta bagi kesalahan yang sama di bawah undang-undang Negara Yang Diminta, permintaan bagi ekstradisi tidak boleh dikemukakan tanpa terlebih dahulu dirundingkan dan dipersetujui oleh kedua-dua Negara untuk membuat permintaan itu.

Perkara 7

Prosedur Ekstradisi dan Dokumen Yang Dikehendaki

1. Segala permintaan bagi ekstradisi hendaklah dikemukakan melalui saluran diplomatik.

2. Segala permintaan hendaklah disokong dengan:
 - (a) dokumen, pernyataan, atau jenis-jenis maklumat lain yang memperlihatkan identiti orang yang dikehendaki dan tempat kemungkinan orang itu berada;

- (b) maklumat yang memperihalkan fakta kesalahan itu dan sejarah prosedur kes itu;
- (c) suatu pernyataan mengenai peruntukan undang-undang yang memperihalkan unsur-unsur penting kesalahan yang baginya ekstradisi diminta;
- (d) suatu pernyataan mengenai peruntukan undang-undang yang memperihalkan hukuman bagi kesalahan itu; dan
- (e) dokumen, pernyataan, atau jenis-jenis maklumat atau bukti lain yang dinyatakan dalam perenggan (3) atau (4) Perkara ini, sebagaimana yang terpakai.

3. Sesuatu permintaan bagi mengekstradisikan seseorang yang dikehendaki untuk didakwa hendaklah juga disokong dengan:

- (a) suatu salinan waran atau perintah tangkap, jika ada, yang dikeluarkan oleh seorang hakim atau pihak berkuasa kompeten lain;
- (b) suatu salinan dokumen pertuduhan; dan

- (c) apa-apa keterangan yang akan menjustifikasikan komital bagi ekstradisi di bawah undang-undang Negara Yang Diminta, dengan syarat bahawa kedua-dua Negara tidak boleh menghendaki, sebagai suatu syarat untuk mengekstradisikan menurut Triti ini, supaya Negara yang satu lagi membuktikan kes *prima facie* terhadap orang yang dikehendaki itu.

4. Sesuatu permintaan bagi ekstradisi yang berhubungan dengan seseorang yang telah didapati bersalah atas kesalahan yang baginya ekstradisi dikehendaki hendaklah juga disokong dengan:

- (a) suatu salinan penghakiman mengenai sabitan, atau, jika salinan itu tidak boleh didapati, suatu pernyataan oleh pihak berkuasa kehakiman bahawa orang itu telah didapati bersalah;
- (b) maklumat yang membuktikan bahawa orang yang dikehendaki itu adalah orang yang kepadanya dapatan bersalah itu dimaksudkan; dan
- (c) suatu salinan hukuman yang dikenakan, jika orang yang dikehendaki itu telah dihukum, dan suatu pernyataan yang membuktikan setakat mana hukuman itu telah dijalankan.

Perkara 8

Kebolehterimaan Dokumen

Waran tangkap, atau dokumen kehakiman yang membuktikan adanya sabitan, dan apa-apa deposisi atau pernyataan atau keterangan lain yang diberikan secara bersumpah atau berikrar di hadapan mana-mana pihak berkuasa kompeten atau mana-mana salinannya yang diperakui, hendaklah diterima sebagai keterangan dalam mana-mana prosiding bagi ekstradisi:

- (a) jika disahkan dalam hal sesuatu waran dengan ditandatangani, atau dalam hal apa-apa dokumen asal lain dengan diperakui oleh seorang hakim, majistret, atau pihak berkuasa kompeten lain Negara Yang Meminta; atau dalam hal sesuatu salinan dengan diperakui sebagai suatu salinan benar daripada yang asal; dan
- (b) jika Negara Yang Meminta adalah Amerika Syarikat, dengan dimeterai dengan meterai rasmi Peguam Negara Amerika Syarikat atau seorang Menteri lain negara itu; dan jika Negara Yang Meminta adalah Malaysia, dengan diperakui oleh pegawai utama diplomatik atau pegawai konsul Amerika Syarikat yang bermaustatin di Malaysia, sebagaimana yang diperuntukkan oleh undang-undang ekstradisi Amerika Syarikat; atau

- (c) jika ia disahkan mengikut apa-apa cara lain sebagaimana yang dibenarkan oleh undang-undang Negara Yang Diminta.

Perkara 9 Penterjemahan

Segala dokumen yang dikemukakan oleh Negara Yang Meminta hendaklah diterjemahkan ke dalam bahasa Negara Yang Diminta melainkan jika kehendak ini diketepikan oleh Negara Yang Diminta.

Perkara 10 Dokumentasi Tambahan

1. Jika Negara Yang Diminta berpendapat bahawa dokumen yang diberikan bagi menyokong permintaan bagi ekstradisi orang yang dikehendaki adalah tidak mencukupi untuk memenuhi kehendak Triti ini, Negara itu hendaklah meminta dikemukakan dokumen tambahan yang perlu. Negara Yang Diminta boleh menetapkan suatu had masa bagi pengemukaan dokumen itu, dan boleh memberikan suatu lanjutan had masa yang munasabah di atas permohonan Negara Yang Meminta yang menyatakan sebab-sebab bagi permohonan itu.

2. Jika orang yang dikehendaki itu berada dalam jagaan dan dokumen tambahan yang dikemukakan adalah tidak mencukupi, atau jika dokumen itu tidak diterima dalam tempoh yang dinyatakan oleh Negara Yang Diminta, orang itu boleh dilepaskan daripada jagaan. Pelepasan itu tidaklah boleh menjejaskan penangkapan semula dan ekstradisi orang itu jika dokumen tambahan diterima kemudiannya.

Perkara 11

Penangkapan Sementara

1. Dalam hal yang mendesak, suatu Negara Pejanji boleh meminta penangkapan sementara orang yang dikehendaki sementara menunggu permintaan ekstradisi diserahkan. Sesuatu permintaan bagi penangkapan sementara boleh dihantar melalui saluran diplomatik atau secara langsung antara Jabatan Keadilan Amerika Syarikat dan Jabatan Peguam Negara, Malaysia. Kemudahan Pertubuhan Polis Jenayah Antarabangsa (INTERPOL) boleh digunakan untuk menghantarkan permintaan itu.

2. Permohonan bagi mendapatkan penangkapan sementara hendaklah mengandungi:

(a) satu perihalan orang yang dikehendaki itu;

- (b) tempat orang yang dikehendaki itu berada, jika diketahui;
- (c) suatu pernyataan ringkas fakta kes itu, termasuklah, jika boleh, masa dan tempat kesalahan itu;
- (d) suatu perihalan undang-undang yang dilanggari;
- (e) suatu pernyataan mengenai adanya waran tangkap atau dapatan bersalah atau penghakiman mengenai sabitan terhadap orang yang dikehendaki itu; dan
- (f) suatu pernyataan bahawa permintaan bagi ekstradisi orang yang dikehendaki itu akan menyusul.

3. Apabila permohonan diterima, Negara Yang Diminta hendaklah mengambil langkah yang sewajarnya untuk memastikan orang yang dikehendaki itu ditangkap. Negara Yang Meminta hendaklah diberitahu tanpa kelengahan mengenai penyelesaian permohonannya dan alasan bagi apa-apa penolakan.

4. Seseorang yang ditangkap sementara boleh dilepaskan daripada jagaan apabila habis tempoh enam puluh (60) hari dari tarikh penangkapan sementara menurut Triteri ini jika pihak berkuasa eksekutif Negara Yang Diminta tidak menerima permintaan rasmi bagi ekstradisi dan dokumen menyokong yang dikehendaki dalam Perkara 7. Di atas permohonan Negara Yang Meminta, tempoh ini boleh dilanjutkan sehingga tiga puluh (30) hari sebagai tambahan selepas habis tempoh enam puluh (60) hari itu.

5. Fakta bahawa orang yang dikehendaki itu telah dilepaskan daripada jagaan menurut perenggan (4) Perkara ini tidaklah boleh memudaratkan penangkapan semula dan ekstradisi orang itu kemudiannya jika permintaan ekstradisi dan dokumen menyokong diserahkan pada suatu tarikh yang kemudian.

Perkara 12

Keputusan dan Penyerahan

1. Negara Yang Diminta hendaklah segera memberitahu Negara Yang Meminta keputusannya tentang permintaan bagi ekstradisi itu.

2. Jika permintaan itu ditolak keseluruhan atau sebahagiannya, Negara Yang Diminta hendaklah memberi penjelasan mengenai alasan-alasan penolakan itu. Negara Yang Diminta hendaklah menyediakan salinan keputusan penghakiman yang berkaitan berkenaan dengan kes itu apabila diminta.

3. Jika permintaan bagi ekstradisi diberikan, pihak berkuasa Negara-Negara Pejanji hendaklah bersetuju akan tarikh dan tempat bagi menyerahkan orang yang dikehendaki itu.

4. Jika orang yang dikehendaki itu tidak dibawa keluar dari wilayah Negara Yang Diminta dalam masa yang ditetapkan oleh undang-undang Negara itu, orang itu boleh dilepaskan daripada jagaan, dan Negara Yang Diminta boleh kemudiannya menolak ekstradisi bagi kesalahan yang sama.

5. Apabila tamat prosiding terhadap orang yang diserahkan kepada Negara Yang Meminta, Negara itu hendaklah atas permintaan memberitahu Negara Yang Diminta mengenai keputusan prosiding itu dan atas permintaan menyediakan suatu salinan keputusan mahkamah yang muktamad.

Perkara 13

Penyerahan Sementara dan Tertangguh

1. Negara Yang Diminta boleh menangguhkan prosiding ekstradisi terhadap seseorang yang sedang didakwa atau yang sedang menjalani hukuman di Negara itu. Penangguhan itu boleh diteruskan sehingga pendakwaan orang yang dikehendaki itu telah ditamatkan atau sehingga orang itu telah menjalani apa-apa hukuman yang dikenakan.

2. Jika permintaan ekstradisi diberikan dalam hal seseorang yang sedang diambil tindakan undang-undang atau yang menjalani sesuatu hukuman di wilayah Negara Yang Diminta, Negara Yang Diminta boleh menyerahkan untuk sementara orang yang dikehendaki itu kepada Negara Yang Meminta bagi maksud pendakwaan. Orang yang diserahkan sedemikian hendaklah diletakkan dalam jagaan Negara Yang Meminta dan hendaklah dihantar balik kepada Negara Yang Diminta selepas tamatnya prosiding terhadap orang itu, mengikut syarat-syarat yang akan ditentukan dengan persetujuan Negara-Negara Pejanji.

Perkara 14

Permintaan Bagi Ekstradisi Yang Dibuat Oleh Beberapa Negara

Jika Negara Yang Diminta menerima permintaan daripada Negara Pejanji yang satu lagi dan daripada mana-mana Negara lain bagi ekstradisi orang yang sama, sama ada bagi kesalahan yang sama atau bagi suatu kesalahan yang berlainan, pihak berkuasa eksekutif Negara Yang Diminta hendaklah menentukan ke Negara mana ia akan menyerahkan orang itu. Dalam membuat keputusannya, Negara Yang Diminta hendaklah mempertimbangkan segala fakta yang relevan, termasuklah tetapi tidak dihadkan kepada:

- (a) sama ada permintaan itu dibuat menurut mana-mana triti;

- (b) tempat di mana setiap kesalahan dilakukan;
- (c) kepentingan Negara-Negara Yang Meminta masing-masing;
- (d) beratnya kesalahan-kesalahan itu;
- (e) kerakyatan mangsa;
- (f) kemungkinan adanya ekstradisi selanjutnya antara Negara-Negara Yang Meminta; dan
- (g) aturan permintaan-permintaan itu diterima daripada Negara-Negara Yang Meminta.

Perkara 15

Penyitaan dan Penyerahan Harta

1. Setakat yang dibenarkan di bawah undang-undangnya, Negara Yang Diminta boleh menyita dan menyerahkan segala artikel, dokumen, dan keterangan yang berkaitan dengan kesalahan yang berkenaan dengannya ekstradisi diberikan. Butiran yang disebutkan dalam Perkara ini boleh diserahkan walaupun ekstradisi tidak boleh dilaksanakan oleh kerana orang yang dikehendaki itu mati, hilang atau melarikan diri.

2. Negara Yang Meminta boleh mengenakan syarat bagi penyerahan harta itu, di atas jaminan yang memuaskan hati daripada Negara Yang Meminta, bahawa harta itu hendaklah dikembalikan kepada Negara Yang Diminta dengan seberapa segera yang praktik. Negara Yang Diminta boleh juga menangguhkan penyerahan harta itu jika harta itu diperlukan sebagai keterangan di Negara Yang Diminta.

3. Hak pihak ketiga dalam harta itu hendaklah dihormati dengan sewajarnya.

Perkara 16

Rukun Spesialiti

1. Seseorang yang diekstradisikan di bawah Triti ini tidaklah boleh ditahan, dibicarakan, atau dihukum di Negara Yang Meminta kecuali bagi:

- (a) kesalahan yang baginya ekstradisi telah diberikan atau apa-apa kesalahan hukuman lebih ringan yang dibuktikan oleh fakta yang ke atasnya ekstradisi yang pertama disebutkan diasaskan;
- (b) apa-apa kesalahan yang dilakukan selepas ekstradisi orang itu; atau

(c) sesuatu kesalahan yang baginya pihak berkuasa eksekutif Negara Yang Diminta telah bersetuju supaya orang itu ditahan, dibicarakan atau dihukum. Bagi maksud subperenggan ini:

(i) Negara Yang Diminta boleh menghendaki pengemukaan dokumen yang dinyatakan dalam Perkara 7; dan

(ii) orang yang diekstradisikan itu boleh ditahan oleh Negara Yang Meminta selama sembilan puluh (90) hari, atau bagi apa-apa masa yang lebih lama sebagaimana yang dibenarkan oleh Negara Yang Diminta, sementara permintaan itu diproseskan.

2. Seseorang yang diekstradisikan di bawah Triti ini tidaklah boleh diekstradisikan ke negara ketiga bagi suatu kesalahan yang dilakukan sebelum penyerahannya melainkan jika negara yang menyerahkan itu bersetuju.

3. Perenggan (1) dan (2) Perkara ini tidaklah mencegah penahanan, pembicaraan, atau penghukuman seseorang yang diekstradisikan atau ekstradisi orang itu ke suatu negara ketiga, jika:

- (a) orang itu meninggalkan wilayah Negara Yang Meminta selepas esktradisi dan secara sukarela kembali ke wilayah itu; atau
- (b) orang itu tidak meninggalkan wilayah Negara Yang Meminta dalam masa lima belas (15) hari pada hari orang itu bebas untuk meninggalkannya.

Perkara 17

Penepian Prosiding Ekstradisi

1. Jika orang yang dikehendaki itu bersetuju kembali ke Negara Yang Meminta selepas dinasihatkan sendiri oleh pihak berkuasa kehakiman yang kompeten tentang kesan persetujuan itu di bawah undang-undang Negara Yang Diminta, Negara Yang Diminta boleh menyerahkannya tanpa prosiding selanjutnya.
2. Negara Yang Diminta boleh menghendaki supaya penyerahan menurut Perkara ini hendaklah tertakluk kepada Perkara 16.

Perkara 18

Transit

1. Mana-mana satu Negara Pejanji boleh membenarkan diangkut melalui wilayahnya seseorang yang diserahkan ke Negara yang satu lagi oleh suatu Negara ketiga. Sesuatu permintaan bagi transit hendaklah dibuat melalui saluran diplomatik atau secara langsung antara Jabatan Keadilan Amerika Syarikat dan Kementerian Hal Ehwal Dalam Negeri, Malaysia. Kemudahan Pertubuhan Polis Jenayah Antarabangsa (INTERPOL) boleh digunakan untuk menghantar permintaan itu. Ia hendaklah mengandungi suatu perihalan orang yang diangkut itu dan suatu pernyataan ringkas fakta kes itu. Seseorang dalam transit boleh ditahan dalam jagaan semasa tempoh transit.

2. Tiada kebenaran diperlukan jika pengangkutan udara digunakan dan tiada pendaratan dijadualkan di wilayah Negara Pejanji. Jika sesuatu pendaratan tak dijadualkan berlaku di wilayah Negara Pejanji yang satu lagi, Negara Pejanji yang satu lagi itu boleh menghendaki permintaan bagi transit dibuat sebagaimana yang diperuntukkan dalam perenggan (1). Negara Pejanji itu hendaklah menahan orang yang akan diangkut sehingga permintaan bagi transit diterima dan transit itu dilaksanakan, selagi permintaan itu diterima dalam masa sembilan puluh enam (96) jam dari pendaratan tak dijadualkan itu.

Perkara 19
Representasi dan Perbelanjaan

1. Negara Yang Diminta hendaklah menasihati, membantu, hadir di mahkamah bagi pihak Negara Yang Meminta, dan mewakili kepentingan Negara Yang Meminta, atau selainnya membuat perkiraan yang perlu bagi representasi guaman Negara Yang Meminta, dalam apa-apa prosiding yang berbangkit daripada suatu permintaan bagi ekstradisi.

2. Negara Yang Meminta hendaklah menanggung perbelanjaan yang berhubungan dengan penterjemahan dokumen-dokumen dan pengangkutan orang yang diserahkan. Negara Yang Diminta hendaklah membayar segala perbelanjaan lain yang dilakukan di Negara itu disebabkan oleh prosiding ekstradisi itu.

3. Kedua-dua Negara tidak boleh membuat apa-apa tuntutan wang terhadap Negara yang satu lagi yang berbangkit daripada penangkapan, penahanan, pemeriksaan, atau penyerahan orang yang dikehendaki di bawah Triti ini.

Perkara 20
Perundingan

Jabatan Keadilan Amerika Syarikat dan Jabatan Peguam Negara Malaysia boleh berunding antara satu sama lain secara langsung atau melalui kemudahan Pertubuhan Polis Jenayah Antarabangsa (INTERPOL) berkaitan dengan pemprosesan kes-kes individu dan bagi membantu menyenggara dan memperbaiki prosedur bagi pelaksanaan Triti ini.

Perkara 21
Pemakaian

Triti ini hendaklah terpakai kepada kesalahan-kesalahan yang dilakukan sebelum dan juga selepas ia mula berkuatkuasa.

Perkara 22
Mula Berkuatkuasa

1. Triti ini, bersama dengan pertukaran nota yang mentafsirkan bahagian-bahagian tertentu Triti, hendaklah mula berkuatkuasa apabila kedua-dua pihak telah memberitahu satu sama lain melalui pertukaran nota diplomatik selanjutnya mengenai penyempurnaan kehendak mereka masing-masing telah disempurnakan untuk mula berkuatkuasa.

2. Apabila Triti ini mula berkuatkuasa, Perjanjian Ekstradisi antara Amerika Syarikat dan Great Britain, yang ditandatangani di London pada Disember 22, 1931, hendaklah terhenti daripada berkuatkuasa antara Amerika Syarikat dan Malaysia. Walau bagaimanapun, triti yang terdahulu itu hendaklah terpakai kepada mana-mana prosiding ekstradisi yang mana dokumen-dokumen ekstradisi telahpun dikemukakan kepada mahkamah Negara Yang Diminta pada masa Triti ini mula berkuatkuasa.

Perkara 23
Penamatan

Mana-mana satu Negara Pejanji boleh menamatkan Triti ini pada bila-bila masa dengan memberikan notis bertulis kepada Negara Pejanji yang satu lagi melalui saluran diplomatik, dan penamatan itu hendaklah berkuatkuasa enam (6) bulan selepas tarikh notis itu.

PADA MENYAKSIKAN HAL DI ATAS, yang bertandatangan di bawah ini, yang diberikuasa dengan sewajarnya oleh Kerajaan mereka masing-masing, telah menandatangani Triti ini.

DIBUAT di Kuala Lumpur pada 3hb Ogos, 1995, dalam dua salinan, dalam bahasa Inggeris dan bahasa Melayu, kedua-dua teks sama sah dan, dalam hal perbezaan pentafsiran, teks bahasa Inggeris adalah teks yang mengatasi.



**BAGI KERAJAAN
AMERIKA SYARIKAT**



**BAGI KERAJAAN
MALAYSIA**

August 3, 1995

Excellency:

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

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

His Excellency,

Datuk Abdullah bin Haji Ahmad Badawi

Minister of Foreign Affairs

Kuala Lumpur

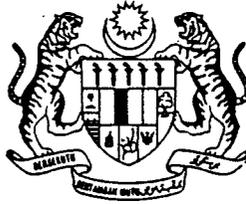
whether those facts were known or unknown at the time of the consultation. Neither Contracting State shall deny automatically all requests to which Article 6 would apply, nor exercise its discretion under Article 6 based solely on the difference between the applicable punishments.

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

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

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

Warren Christopher



Malaysian Note

August 1995

H.E. Mr. Warren Christopher
U.S. Secretary of State.

Excellency,

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

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

Article 6 of the Treaty requires that in cases in which a person could be subject to capital punishment in the Requesting State but would not be subject to capital punishment in the Requested State for the same offense under the law of the Requested State, no request for extradition will be submitted without prior consultation and agreement by both States to make such a request. A consultation between the Contracting States would not constitute a consultation within the meaning of Article 6 and any agreement reached between the Contracting States as a result of such consultation

would not be binding if there has been any non-disclosure of relevant facts during the consultation, whether the non-disclosure was deliberate or otherwise and whether those facts were known or unknown at the time of the consultation. Neither Contracting State shall deny automatically all requests to which Article 6 would apply, nor exercise its discretion under Article 6 based solely on the difference between the applicable punishments.

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

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

LAWS OF MALAYSIA
Act 479
EXTRADITION ACT 1992

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

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

PART II

EXTRADITION OFFENCE

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

PART III

RETURN OF FUGITIVE CRIMINALS

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

PART IV

PROCEDURE FOR RETURN OF FUGITIVE CRIMINALS

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

[Arrangements of Sections]

4

ACT 479

Section

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

PART V

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

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

PART VI

**RETURN OF FUGITIVE CRIMINALS WHO ARE ALSO PRISONERS
TO STAND TRIAL**

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

PART VII

**RETURN OF ACCUSED OR CONVICTED
PERSONS TO MALAYSIA**

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

EXTRADITION

5

PART VIII

HABEAS CORPUS AND REVIEW

Section

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

PART IX

MISCELLANEOUS

38. Country includes colonies, dependencies, protectorates, vessels or aircraft.
39. Liability of fugitive criminal to be arrested and returned.
40. Minister may direct detention of fugitive criminal on transit.
41. Appearance on behalf of the Public Prosecutor.
42. Jurisdiction as to offences committed at sea or in air.
43. Discharge of fugitive criminal if not returned within three months.
44. Provisions in the Criminal Procedure Code when applicable.
45. Property found on fugitive criminal.
46. Forms.
47. Power of Minister to discharge any fugitive criminal in custody.
48. Simultaneous requisitions.
49. Discretion in respect of return of certain fugitive criminals.
50. Taking of evidence for purpose of criminal matters pending in a country.
51. Witnesses to attend and give evidence, etc.
52. Taking of evidence for purpose of return of fugitive criminals to Malaysia.
53. Rules.

PART X

54. Repeal.
- SCHEDULE.

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

- (a) after hearing any representation made in support of the extradition request;
- (b) upon the production of supporting documents in relation to the offence;
- (c) upon being satisfied that the alleged act or omission of the fugitive criminal would, if it had taken place in Malaysia, constitute an offence under the laws of Malaysia;

Procedure
before
Sessions
Court where a
special
direction has
been given
under section
4.

(d) if the fugitive criminal does not satisfy the Court that there are substantial grounds for believing that—

- (i) the offence is an offence of a political character, or that the proceedings are being taken with a view to try or punish him for an offence of a political character;
 - (ii) prosecution for the offence in respect of which his return is sought is barred by time in the country which seeks his return;
 - (iii) the offence is an offence under military law which is not also an offence under the general criminal law;
 - (iv) the fugitive criminal has been acquitted or pardoned by a competent tribunal or authority in the country which seeks his return or in Malaysia;
 - (v) the fugitive criminal has undergone the punishment provided by the law of the country which seeks his return or of Malaysia in respect of the extradition offence or any other offence constituted by the same conduct as that which constitutes the extradition offence;
- (e) upon being satisfied that the fugitive is not accused of an offence, nor undergoing a sentence in respect of an offence, in Malaysia, other than the extradition offence in respect of which his return is sought,

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

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

EXTRADITION

19

- (3) In this section, "supporting documents" means—
- (a) any duly authenticated warrant for the arrest of the fugitive criminal issued by the country which seeks his return or any duly authenticated copy of such warrant;
 - (b) any duly authenticated document to provide evidence of the fugitive criminal's conviction or sentence or the extent to which a sentence imposed has not been carried out;
 - (c) a statement in writing setting out a description of, and the penalty applicable in respect of, the offence and a duly authenticated statement in writing setting out the conduct constituting the offence.