

4. When the National Public Safety Commission takes a step provided for in paragraph 1 above, it shall hear the opinion of the Minister of Justice.
5. The chief of a prefectural police force which has been directed to make an inquiry as provided for in item (1) of paragraph 1 above, shall order a police officer of his force to take the steps necessary for the inquiry.
6. The head of a national agency who has received the documents concerning a request for cooperation as provided for in item (2) of paragraph 1 above, may order a staff member of his agency who is a judicial police official to take the steps necessary for the requested inquiry.
7. With regard to the inquiry provided for in paragraph 5 or 6 above, a police officer or a staff member of national agency provided for in paragraph 6 above may question any person concerned, make a noncompulsory inspection, ask the owner, possessor or custodian of a document or other material to produce it, or ask a public office, or a public or private organization to make reports on necessary matters.

provided for in item (3) of that paragraph which has appropriate jurisdiction, except when it is clear from the documents concerning the request for assistance which agency shall obtain the evidence, such as when the examination of a witness is requested.

*(Rules of the Supreme Court)*

*Article 16.*

Besides the provisions of this Law, the necessary procedural rules concerning the issuance of warrants, the examination of witnesses, and objections, shall be determined by the Supreme Court.

*(Cooperation with the International Criminal Police Organization)*

*Article 17.*

1. When the International Criminal Police Organization requests cooperation in the investigation of a criminal case in a foreign country, the National Public Safety Commission may take one of the following steps:

- (1) Direct a prefectural police force which is deemed to be appropriate to make the necessary inquiry;
- (2) Forward the documents concerning the request for cooperation to the head of a national agency provided for in paragraph 1, item (3) of Article 5.

2. The provisions Article 2 (except for items (3) and (4)), shall apply *mutatis mutandis* to a case provided for in paragraph 1 above.

3. With regard to the steps provided for in paragraph 1 above, the National Public Safety Commission shall consult with the head of a national agency provided for in item (2) of paragraph 1 above which has appropriate jurisdiction, except when it is clear from the request which agency shall make the inquiry.

provided for in paragraph 2 of Article 5, shall promptly forward the record or a certified copy thereof, with his opinion attached, to the Minister of Justice; when he is unable to do so, he shall return the documents concerning the request for assistance to the Minister of Justice.

5. When, after receiving the evidence provided for in paragraph 1, 3, or 4 above, the Minister of Justice deems it to be necessary, he shall determine conditions which the requesting country shall observe in relation to the use or the return of the evidence.

6. When the requesting country does not assure that it will observe the conditions provided for in paragraph 5 above, the Minister of Justice shall not provide the assistance.

*(Notification when assistance is not provided)*

*Article 14.*

When the Minister of Justice, after taking steps as provided for in paragraph 1, item (2) or (3) of Article 5, or in paragraph 2 of Article 5, deems it to be inappropriate to provided assistance, he shall, without delay, notify the person who has received the documents concerning the request for assistance to that effect.

*(Consultation)*

*Article 15.*

1. When the Minister of Justice deems it to be inappropriate to honor the request and decides not to provide assistance, or when he determines the conditions provided for in paragraph 5 of Article 13, he shall consult with the Minister of Foreign Affairs.

2. When the Minister of Justice takes a step provided for in one of the items of paragraph 1 of Article 5, he shall consult with the National Public Safety Commission and with the head of a national agency

*(Application mutatis mutandis of Code of Criminal Procedure, etc.)*

*Article 12.*

Except as otherwise provided for in this Law, the provisions of the Code of Criminal Procedure (limited only to Chapters II and V through XIII of Book I, Chapter I of Book II, Chapters I and IV of Book III, and Book VII), and of the laws, regulations and ordinances concerning the costs of criminal proceedings, shall apply mutatis mutandis to the measures taken by a public prosecutor, public prosecutor's assistant officer or a judicial police official, to the issuance of a warrant and the examination of a witness by a judge, and to the decision rendered by a court or a judge, insofar as such application does not conflict with the nature of the proceedings.

*(Steps after measures have been taken, etc.)*

*Article 13.*

1. When the chief prosecutor finishes obtaining the evidence necessary for assistance, he shall promptly forward the evidence obtained, with his opinion attached, to the Minister of Justice. When the head of a national agency provided for in paragraph 1, item (3) of Article 5 finishes obtaining the evidence, he shall do the same.
2. When the chief of a police force finishes obtaining the evidence necessary for assistance, the prefectural Public Safety Commission shall promptly forward the evidence obtained, with its opinion attached, to the National Public Safety Commission.
3. Upon receiving the evidence as provided for in paragraph 2 above, the National Public Safety Commission shall promptly forward the evidence, with its opinion attached, to the Minister of Justice.
4. The custodian of a record made in connection with a case in Japan who receives the documents concerning a request for assistance as



necessary, undertake the seizure or search of evidence, or compulsory inspection, upon a warrant issued by a judge.

3. A public prosecutor or judicial police officer may cause a public prosecutor's assistant officer or a judicial police official to take the measures provided for in paragraphs 1 and 2 above.

*(Application for examination of a witness)*

*Article 9.*

When a request for assistance requires the examination of a person as a witness, or when a person concerned refuses to appear or to make a statement at an interrogation provided for in paragraph 1 of Article 8, a public prosecutor may apply to a judge for the examination of a witness.

*(Application for a warrant, etc.)*

*Article 10.*

An application for the issuance of warrant or the examination of a witness shall be accompanied by the written statement provided for in item (4) of Article 2.

*(Jurisdiction of the court, etc.)*

*Article 11.*

An application for the issuance of a warrant or the examination of a witness shall be made to a judge of the District Court which has jurisdiction over the place where the office to which the requesting person belongs is located; an objection to a measure taken by a judicial police official concerning the seizure or the restoration of a seized article shall be made to the District Court having jurisdiction over the place where that judicial police official exercised his duties.

appropriate, and direct it to obtain the evidence necessary for assistance.

*(Steps taken by a chief prosecutor, etc.)*

*Article 7.*

1. When a chief prosecutor receives an order provided for in paragraph 1, item (1) of Article 5, he shall cause a public prosecutor of his office to take measures to obtain the evidence necessary for assistance.
2. When the Superintendent General or a chief of a prefectural police force (hereinafter referred to as the “chief of a police force”) is directed as provided for in Article 6, he shall cause a judicial police officer of his prefectural police force to take measures provided for in paragraph 1 above.
3. When a head of a national agency receives the documents provided for in paragraph 1, item (3) of Article 5, he shall cause a judicial police officer of his agency who is deemed to be appropriate to take measures provided for in paragraph 1 above.

*(Measures taken by a public prosecutor, etc.)*

*Article 8.*

1. With regard to the obtaining of evidence necessary for assistance, a public prosecutor or judicial police officer may: ask any person concerned to appear and interrogate him; request an expert to make an inquiry; make a noncompulsory inspection; ask the owner, possessor or custodian of a document or other material to submit it; or ask a public office, or a public or private organization to make reports on necessary matters.
2. With regard to the obtaining of evidence necessary for assistance, a public prosecutor or judicial police officer may, if it is deemed to be

*(Steps taken by the Minister of Justice)*

*Article 5.*

1. Except in cases provided for in paragraph 2 below, the Minister of Justice shall, when the case does not fall under any one of the items of Article 2 (item (1), (2) or (4) of Article 2, when the request is forwarded as provided for in Article (4) and when it is deemed to be appropriate to honor the request, take one of the following steps:

- (1) Forward the related documents to the chief prosecutor of the District Public Prosecutors Office which is deemed to be appropriate and order him to obtain the evidence necessary for assistance;
- (2) Forward the documents concerning the request for assistance the National Public Safety Commission;
- (3) Forward the documents concerning the request for assistance to the Commandant of the Maritime Safety Agency, or to the head of another national agency to which judicial police officials belong as provided for in Article 190 of the Code of Criminal Procedure (Law No. 131 of 1948).

2. In the case of a request to provided a record made in connection with a case in Japan which is in the custody of a court, public prosecutor or judicial police officer, the Minister of Justice shall forward the documents concerning the request for assistance to the custodian of the record.

*(Steps taken by the National Public Safety Commission)*

*Article 6.*

Upon receiving the documents provided for in paragraph 1, item (2) of Article 5, the National Public Safety Commission shall forward the related documents to the prefectural police force which is deemed to be

- made with a view to investigating a political offense;
- (2) When the act constituting the offense for which assistance is requested would not constitute an offense under the laws, regulations or ordinances of Japan if the act were committed in Japan;
  - (3) When the requesting country has not assured that it would honor a request of same kind made by Japan;
  - (4) In the case of a request for the examination of a witness or the submission of seizable evidentiary material, when the requesting country does not clearly demonstrate in writing that the evidence is indispensable to the investigation.

*(Receipt of requests and forwarding of evidence)*

*Article 3.*

The Minister of Foreign Affairs shall carry out the receipt of requests for assistance and the forwarding of evidence to the requesting country. Provided that the Minister of Justice shall carry out these duties, when the Minister of Foreign Affairs consents, in case of emergency or any other special circumstances.

*(Steps taken by the Minister of Foreign Affairs)*

*Article 4.*

Upon receiving a request for assistance, the Minister of Foreign Affairs shall, except in cases provided for in item (3) of Article 2, forward the written request for assistance or a certificate which he has prepared stating that the request for assistance has been made and the related documents, with his opinion attached, to the Minister of Justice.

tion and the person with whom the request is concerned is a Japanese national.

2. The Minister of Justice shall consult with the Minister of Foreign Affairs before deciding whether to give the approval provided for in paragraph 1 above.

#### Appendix 4

### LAW FOR INTERNATIONAL ASSISTANCE IN INVESTIGATION

(Law No. 69 of 1980)

#### *(Definitions)*

##### *Article 1.*

As used in this Law, the following terms shall have the corresponding meaning described herein:

- (1) "Assistance" means to provide a foreign country, at its request, with evidence necessary for the country to investigate a criminal case;
- (2) "Requesting country" means a foreign country which makes a request to Japan for assistance;
- (3) "Offense for which assistance is requested" means any offense which is mentioned in a request for assistance by a requesting country as being a subject of investigation.

#### *(Restrictions on assistance)*

##### *Article 2.*

Assistance shall not be provided in any of the following circumstances:

- (1) When the offense for which assistance is requested is a political offense, or when the request for assistance is deemed to have been

*(Request for extradition relating to an offense committed prior to the entry into force of treaty of extradition)*

*Article 33.*

When a new treaty of extradition is concluded between Japan and a foreign country, the provisions of this Law concerning a request for surrender pursuant to a treaty of extradition shall also apply to a request for surrender which is made after the entry into force of the treaty, for an offense committed prior to the entry into force of the treaty, except if there are provisions in the treaty to the effect that the contracting country may not request that Japan surrender an offender for an offense committed prior to the entry into force of the treaty concerned.

*(Steps taken by the Minister of Justice concerning the approval of transportation of a person surrendered)*

*Article 34.*

1. The Minister of Justice, upon a request made by a foreign country through the diplomatic channel, may give approval to transport through the territory of Japan a person surrendered to that country by another foreign country, except in any of the following circumstances:

- (1) When the act which has given rise to the extradition of the person with whom the request is concerned would not constitute an offense under Japanese laws, regulations or ordinances if the act were committed in Japan;
- (2) When the offense which has given rise to the extradition of the person with whom the request is concerned is a political offense or when the request for the extradition concerned is deemed to have been made with a view to trying or punishing the person surrendered for a political offense;
- (3) When the request has not been made pursuant to a treaty of extradi-

has been applied *mutatis mutandis* pursuant to paragraph 1 above, the suspended detention under a permit of provisional detention shall lose its validity in any of the following circumstances:

- (1) When the notification provided for in paragraph 1 of Article 26, or in paragraph 2 of Article 28 is made to the offender concerned;
- (2) When the notification provided for in paragraph 1 of Article 27 is not made to the offender concerned within two months (or within a period of less than two months if the treaty of extradition so provides) from the day on which the offender concerned was taken into custody under a permit of provisional detention.

*(Rules of Supreme Court)*

*Article 31.*

Besides the provisions of this Law, the necessary procedural rules concerning examinations by the Tokyo High Court and concerning the issuance of permits of detention or of provisional detention shall be determined by the Supreme Court.

*(Exception to the jurisdictional area of the Tokyo High Court)*

*Article 32.*

Notwithstanding the provisions of the Law for the Establishment of Inferior Courts and their Territorial Jurisdiction (Law No. 63 of 1947), there shall be no provision limiting the jurisdictional area of the Tokyo High Court in relation to the performance of the duties of the Tokyo High Court or its judges, or to that of the public prosecutors of the Tokyo High Public Prosecutors Office, which are undertaken pursuant to this Law of Extradition.



concerned to that effect, and at the same time shall order the Superintending Prosecutor of the Tokyo High Public Prosecutors Office to release the offender concerned.

3. When an order of release provided for in paragraph 2 above is issued, a public prosecutor of the Tokyo High Public Prosecutors Office shall immediately release the offender concerned.

*Article 29.*

When the warden of prison does not receive, with respect to an offender who is detained under a permit of provisional detention, the notification provided for in paragraph 2 of Article 27 within two months (or within a period of less than two months if the treaty of extradition so provides) from the day on which the offender was taken into custody, the warden shall release the offender concerned and report to that effect to the Superintending Prosecutor of the Tokyo High Public Prosecutors Office.

*Article 30.*

1. The provisions of paragraphs 1 to 5 of Article 22 shall apply *mutatis mutandis* to detention under a permit of provisional detention.
2. In the case of a detention under a permit of provisional detention which is suspended as provided for in paragraph 1 of Article 22, which has been applied *mutatis mutandis* pursuant to paragraph 1 above, when the offender concerned is notified as provided for in paragraph 1 of Article 27, the suspension of detention under the permit of provisional detention shall be deemed to be the suspension of detention provided for in paragraph 1 of Article 22.
3. In the case of a detention under a permit of provisional detention which is suspended as provided for in paragraph 1 of Article 22, which

*Article 27.*

1. When the Superintending Prosecutor of the Tokyo High Public Prosecutors Office receives an order from the Minister of Justice as provided for in paragraph 1 of Article 4 concerning an offender for whom a permit of provisional detention has been issued, he shall immediately cause a public prosecutor of the Tokyo High Public Prosecutors Office to notify the offender concerned that the request for surrender has been made.
2. The notification provided for in paragraph 1 above shall be carried out by communicating to the warden of the prison if the offender concerned is detained under a permit of provisional detention, or by forwarding a written notification to the offender concerned if he is not detained.
3. When the notification provided for in paragraph 1 above is made to an offender who is detained under a permit of provisional detention, such detention shall be deemed to be detention under a permit of detention; for the purposes of applying paragraph 1 of Article 8, it shall be deemed that a public prosecutor of the Tokyo High Public Prosecutors Office has taken the fugitive into custody under a permit of detention at the time of this notification.

*Article 28.*

1. When the Minister of Foreign Affairs is notified by a foreign country which requested provisional detention that no request for the surrender of the offender concerned will be made, after he has forwarded the documents provided for in Article 23, he shall immediately notify the Minister of Justice to that effect.
2. When the Minister of Justice receives the notification provided for in paragraph 1 above, he shall immediately notify the Superintending Prosecutor of the Tokyo High Public Prosecutors Office and the offender

Tokyo High Public Prosecutors Office to provisionally detain the offender concerned.

*Article 25.*

1. The Superintending Prosecutor of the Tokyo High Public Prosecutors Office shall, when he receives the order from the Minister of Justice provided for in Article 24, cause a public prosecutor of the Tokyo High Public Prosecutors Office to detain the offender concerned under a permit of provisional detention which is to be issued in advance by a judge of the Tokyo High Court.
2. The provisions of paragraph 2 and 3 of Article 5, Article 6 and Article 7 shall apply mutatis mutandis to detention under a permit of provisional detention.

*Article 26.*

1. When the Minister of Justice, after receiving from the Minister of Foreign Affairs, as provided for in Article 3, the documents concerning a request for the surrender of an offender who is detained under a permit of provisional detention, does not issue the order provided for in paragraph 1 of Article 4 because the case falls under any of the items contained in that paragraph, he shall notify the Superintending Prosecutor of the Tokyo High Public Prosecutors Office and the offender concerned to that effect and order the Superintending Prosecutor of the Tokyo High Public Prosecutors Office to release the offender concerned.
2. When an order of release provided for in paragraph 1 above is issued, a public prosecutor of the Tokyo High Public Prosecutors Office shall immediately release the offender concerned.

for in paragraph 1 of Article 14, that his surrender is deemed to be inappropriate.

*(Request concerning provisional detention, etc.)*

*Article 23.*

1. When the Minister of Foreign Affairs receives a request pursuant to a treaty of extradition from a contracting country for the provisional detention of an offender whose surrender by Japan may be requested under the treaty of extradition, for an offense (for which the contracting country may request the offender's surrender by Japan under the treaty of extradition), the Minister of Foreign Affairs shall, except in any of the following circumstances, forward to the Minister of Justice a certificate stating that the request for provisional detention has been made, together with the related documents:

- (1) When there has been no notification either that a warrant has been issued for the arrest of the person concerned or that a sentence has been imposed on him;
- (2) When there has been no assurance that a request for the extradition of the person concerned will be made.

2. When a request for the provisional detention of an offender is not made pursuant to a treaty of extradition, paragraph 1 above shall apply only if the requesting country has assured that it would honor a request of the same kind made by Japan.

*(Steps taken concerning provisional detention)*

*Article 24.*

When the Minister of Justice receives the documents provided for in Article 23 and deems it to be appropriate to provisionally detain the offender concerned, he shall order the Superintending Prosecutor of the

3. When a public prosecutor of the Tokyo High Public Prosecutors Office revokes the suspension of detention as provided for in paragraph 2 above, he may cause a public prosecutor's assistant officer, etc. to take the fugitive into custody.
4. Custody under paragraph 3 above shall be carried out by bringing the fugitive to the prison in which he is to be detained after showing to him a certified copy of the permit of detention and a written statement prepared by a public prosecutor of the Tokyo High Public Prosecutors Office stating that the suspension of detention has been revoked.
5. Notwithstanding the provisions of paragraph 4 above, when the executing official is not in possession of the documents provided for in paragraph 4 above and thus cannot show them to the fugitive, he may, in an urgent case, bring the fugitive to the prison in which the fugitive is to be detained after telling the fugitive that the suspension of detention has been revoked, provided that the documents shall be shown to the fugitive as promptly as is practicable.
6. When the suspension of detention is revoked as provided for in the latter part of paragraph 2 above and the fugitive is committed to the prison in which he is to be detained, the Superintending Prosecutor of the Tokyo High Public Prosecutors Office shall promptly report to that effect, and the date on which the fugitive was taken into custody, to the Minister of Justice.
7. In any of the following circumstances, a detention which has been suspended shall lose its validity:
  - (1) When a certified copy of the decision of the court provided for in paragraph 1, item (1) or (2) of Article 10 is served upon the fugitive;
  - (2) When the notification provided for in paragraph 2 of Article 11 is given to the fugitive;
  - (3) When the fugitive is notified by the Minister of Justice as provided

paragraph 1 or 5 of Article 17, the warden of the prison shall surrender the fugitive to the authorities of the requesting country when those authorities show the permit of custody to him and request him to surrender the fugitive.

2. When the request for surrender provided for in paragraph 1 above is not made within the time limit of surrender, the warden of the prison shall release the fugitive and report to that effect to the Superintending Prosecutor of the Tokyo High Public Prosecutors Office.

*(Escort of the fugitive by the authorities of the requesting country)*

*Article 21.*

Upon receiving a fugitive surrendered as provided for in paragraph 1 of Article 20, the authorities of the requesting country shall promptly escort the fugitive to the requesting country.

*(Suspension of detention )*

*Article 22.*

1. A public prosecutor of the Tokyo High Public Prosecutors Office may, when he deems it to be necessary, suspend the detention of a fugitive detained under a permit of detention, placing him in the custody of his relative or some other person, or otherwise restricting his residence.

2. A public prosecutor of the Tokyo High Public Prosecutors Office may, at any time he deems it to be necessary, revoke the suspension of detention. When a notice of surrender is delivered to the Superintending Prosecutor of the Tokyo High Public Prosecutors Office from the Minister of Justice as provided for in paragraph 1 of Article 17, a public prosecutor of the Tokyo High Public Prosecutors Office shall revoke the suspension of detention.

issued by a public prosecutor of the Tokyo High Public Prosecutors Office.

4. The provisions of Article 6 and 7 shall apply *mutatis mutandis* to the custody of a fugitive under a notice of detention.

5. When a fugitive taken into custody under a notice of detention is committed to the prison in which he is to be detained, the Superintending Prosecutor of the Tokyo High Public Prosecutors Office shall promptly deliver the notice of surrender to the warden of that prison, order the warden to surrender the fugitive, and report this, and the date on which the fugitive was taken into custody, to the Minister of Justice.

#### *Article 18.*

Upon receiving the report provided for in paragraph 5 of Article 17, or in paragraph 6 of Article 22, from the Superintending Prosecutor of the Tokyo High Public Prosecutors Office, the Minister of Justice shall immediately notify the Minister of Foreign Affairs that the fugitive has been detained at the place where he is to be surrendered and of the time limit of surrender.

#### *Article 19.*

1. Upon receiving the permit of custody provided for in paragraph 3 of Article 16, the Minister of Foreign Affairs shall immediately forward the same to the requesting country.

2. Upon receiving the notification provided for in Article 18, the Minister of Foreign Affairs shall immediately notify the requesting country of its contents.

#### *Article 20.*

1. After receiving the order to surrender a fugitive as provided for in



*(Steps taken relating to surrender)*

*Article 16.*

1. The order of surrender provided for in paragraph 1 of Article 14 shall be carried out by the issuance of a notice of surrender.
2. The notice of surrender shall be delivered to the Superintending Prosecutor of the Tokyo High Public Prosecutors Office.
3. Upon issuing the notice of surrender, the Minister of Justice shall forward a permit of custody to the Minister of Foreign Affairs.
4. The notice of surrender and the permit of custody shall each contain the full name of the fugitive, the name of the offense for which extradition is requested, the name of the requesting country, the place of surrender, the time limit of surrender, and the date of issue, and shall bear the name and seal of the Minister of Justice.

*Article 17.*

1. When the Superintending Prosecutor of the Tokyo High Public Prosecutors Office receives a notice of surrender from the Minister of Justice and the fugitive is detained under a permit of detention or such detention has been suspended, the Superintending Prosecutor of the Tokyo High Public Prosecutors Office shall deliver the notice of surrender to the warden of the prison in which the fugitive is or was detained until the suspension of the detention and order the warden to surrender the fugitive.
2. Except in cases provided for in paragraph 1 above, the Superintending Prosecutor of the Tokyo High Public Prosecutors Office shall, upon receiving a notice of surrender from the Minister of Justice, cause a public prosecutor of the Tokyo High Public Prosecutors Office to detain the fugitive under a notice of detention.
3. The notice of detention provided for in paragraph 2 above shall be

fugitive who is detained under a permit of detention.

3. After making notification as provided for in paragraph 1 above that the surrender of the fugitive is deemed to be inappropriate, the Minister of Justice may not order the surrender of the fugitive with respect to the request for extradition concerned. Provided that this shall not apply when the treaty of examination provides otherwise than Article 2 with respect to cases falling under item (8), and the case has ceased to fall under item (8) of Article 2 after a notification was made that the surrender of the fugitive was deemed to be inappropriate because the case fell under item (8) of Article 2.

*(Place and time limit of surrender)*

*Article 15.*

The place where a fugitive is to be surrendered under the order of surrender provided for in paragraph 1 of Article 14 shall be the prison in which the fugitive is detained under a permit of detention; the time limit of the surrender shall be the thirtieth day as counted from the day after the day on which the order of surrender was issued. Provided that when the fugitive is not detained on the day on which the order of surrender is issued, the place of surrender shall be the prison in which the fugitive is to be detained under a notice of detention, or the prison in which the fugitive was detained prior to the suspension of detention, and the time limit of surrender shall be the thirtieth day as counted from the day after the day on which the fugitive is taken into custody under the notice of detention or the day on which he is taken into custody due to the revocation of the suspension of detention.

*(Submission of a certified copy of the written decision to the Minister of Justice)*

*Article 13.*

When a public prosecutor of the Tokyo High Public Prosecutors Office is served with a certified copy of a written decision prepared as provided for in paragraph 3 Article 10, the Superintending Prosecutor of the Tokyo High Public Prosecutors Office shall promptly submit the certified copy and the related documents, with his opinion attached, to the Minister of Justice.

*(Order of the Minister of Justice concerning extradition, etc.)*

*Article 14.*

1. When the Minister of Justice deems it to be appropriate to surrender the fugitive, in the case of a decision rendered as provided for in paragraph 1, item (3) of Article 10, he shall order the Superintending Prosecutor of the Tokyo High Public Prosecutors Office to surrender the fugitive, and at the same time notify the fugitive to that effect; however, when he deems it to be inappropriate to surrender the fugitive, he shall immediately notify the Superintending Prosecutor of the Tokyo High Public Prosecutors Office and the fugitive to that effect, and at the same time order the Superintending Prosecutor of the Tokyo High Prosecutors Office to release the fugitive who is detained under a permit of detention.

2. When an order of release provided for in paragraph 1 above is made, or when an order of surrender provided for in paragraph 1 above is not made within ten days from the day on which a certified copy of the decision provided for in paragraph 1, item (3) of Article 10 was served as provided for in paragraph 3 of Article 10, a public prosecutor of the Tokyo High Public Prosecutors Office shall immediately release the

Minister of Foreign Affairs receives notification from the requesting country that it withdraws its request for extradition, or when the case has come under item (2) of Article 3, he shall immediately notify the Minister of Justice to that effect.

2. When, after the Minister of Justice has issued the order provided for in paragraph 1 of Article 4, he receives from the Minister of Foreign Affairs the notification provided for in paragraph 1 above, or the case has fallen under any of the items of paragraph 1 of Article 4, the Minister of Justice shall immediately rescind the order and the same time notify the fugitive to whom a certified copy of the application for examination provided for in paragraph 3 of Article 8 has been forwarded to that effect.

3. When an order for an application for examination is rescinded after the application for examination has been made, a public prosecutor of the Tokyo High Public Prosecutors Office shall promptly withdraw the application for examination.

*(Release of fugitive)*

*Article 12.*

When a decision is rendered in accordance with paragraph 1, item (1) or (2) of Article 10, or when an order for an application for examination is rescinded as provided for in Article 11, a public prosecutor of the Tokyo High Public Prosecutors Office shall immediately release the fugitive who is detained under a permit of detention.

this case, the provisions of Chapters XI through XIII of Book I of the Code of Criminal Procedure and those of the laws, regulations and ordinances concerning expenses relating to criminal proceedings shall apply *mutatis mutandis*, insofar as their application does not conflict with the nature of the proceedings.

*(Decision of the Tokyo High Court)*

*Article 10.*

1. The Tokyo High Court shall, on the basis of the results of the examination provided for in paragraph 1 of Article 9, render its decision in the following manner:

- (1) When the application for examination is not made conformity with the requirements of the law, its decision to dismiss the application;
- (2) When the case is one in which the fugitive cannot be surrendered, its decision to that effect;
- (3) When the case is one in which the fugitive can be surrendered, its decision to that effect.

2. The decision provided for in paragraph 1 above shall take effect when a public prosecutor of the Tokyo High Public Prosecutors Office is notified as to its substance.

3. When the Tokyo High Court renders its decision as provided for in paragraph 1 above, it shall promptly serve a public prosecutor of the Tokyo High Public Prosecutors Office and the fugitive with certified copies of the written decision and return to the public prosecutor the related documents which he submitted.

*(Rescission of the order for application for examination)*

*Article 11.*

1. When, after forwarding the documents provided for in Article 3, the

tion as to whether the case is one in which the fugitive can be surrendered. This application for examination shall be made within twenty-four hours after the public prosecutor of the Tokyo High Public Prosecutors Office takes the fugitive into custody under a permit of detention or receives the fugitive who was taken into custody under a permit of detention.

2. The application provided for in paragraph 1 above shall be made in writing, accompanied by the related documents.

3. When a public prosecutor of the Tokyo High Public Prosecutors Office makes the application provided for in paragraph 1 above, he shall forward to the fugitive a certified copy of the written application which is provided for in paragraph 2 above.

*(Examination by the Tokyo High Court)*

*Article 9.*

1. When the Tokyo High Court receives the application provided for in Article 8, it shall promptly begin its examination and render a decision. When the fugitive is detained under a permit of detention, the decision shall be rendered, at the latest, within two months from the day on which the fugitive was taken into custody.

2. The fugitive may obtain the assistance of counsel in relation to the examination provided for in paragraph 1 above.

3. Before rendering its decision, the Tokyo High Court shall give the fugitive and his counsel an opportunity to express their opinions, provided that this shall not apply in a case in which a decision is rendered in accordance with paragraph 1, item (1) or (2) Article 10.

4. The Tokyo High Court may, when it is necessary to carry out the examination provided for in paragraph 1 above, examine witnesses, order inquiry by an expert, and order interpretation or translation. In

provided for in Article 5.

2. When a fugitive is taken into custody under a permit of detention, the permit shall be shown to the fugitive.

3. When a public prosecutor's assistant officer, etc. takes a fugitive into custody under a permit of detention, the fugitive shall be brought to a public prosecutor of the Tokyo High Public Prosecutors Office as promptly as is practicable.

4. The provisions of Article 71, paragraph 3 of Article 73, Article 74 and Article 126 of the Code of Criminal Procedure (Law No. 131 of 1948) shall apply *mutatis mutandis* to custody under a permit of detention.

#### *Article 7.*

1. When a public prosecutor of the Tokyo High Public Prosecutors Office takes a fugitive into custody under a permit of detention, or receives a fugitive taken into custody under a permit of detention, he shall investigate the fugitive's identity immediately.

2. The public prosecutor of the Tokyo High Public Prosecutors Office, after establishing the identity of the fugitive, shall immediately inform the fugitive of the grounds for his custody, designate the prison in which he is to be detained, and shall promptly and directly send him to that prison. In this case the provisions of paragraph 1 of Article 6 shall apply *mutatis mutandis*.

#### *(Application for Examination)*

#### *Article 8.*

1. A public prosecutor of the Tokyo High Public Prosecutors Office, when an order from the Minister of Justice provided for in paragraph 1 of Article 4 is made, shall, except when the whereabouts of the fugitive are unknown, promptly apply to the Tokyo High Court for an examina-



*(Detention of fugitive)*

*Article 5.*

1. Upon receiving an order from the Minister of Justice as provided for in paragraph 1 of Article 4, the Superintending Prosecutor of the Tokyo High Public Prosecutors Office shall, except when the fugitive is detained under a permit of provisional detention or except when his detention under a permit of provisional detention is suspended, cause a public prosecutor of the Tokyo High Public Prosecutors Office to detain the fugitive under a permit of detention which shall have been issued in advance by a judge of the Tokyo High Court. Provided that this provision shall not apply when the fugitive has a fixed residence and the Superintending Prosecutor of the Tokyo High Public Prosecutors Office deems that there is no apprehension that the fugitive will escape.
2. A permit of detention provided for in paragraph 1 above may be issued on request from a public prosecutor of the Tokyo High Public Prosecutors Office.
3. The permit of detention shall contain the full name of the fugitive, the name of the offense for which extradition is requested, the name of the requesting country, the effective period of the permit, a statement that after the expiration of the effective period no detention may be commenced and the permit must be returned, and the date of issue of the permit, and shall bear the name and seal of the issuing judge.

*Article 6.*

1. A public prosecutor of the Tokyo High Public Prosecutors Office may cause a public prosecutor's assistant officer, a police officer, or a maritime safety officer or maritime safety sub-officer of the Maritime Safety Agency (hereinafter referred to as "public prosecutor's assistant officer, etc.") to take fugitive into custody under the permit of detention

it would honor a request of the same kind made by Japan.

*(Steps taken by the Minister of Justice)*

*Article 4.*

1. Upon receiving the documents concerning a request for extradition from the Minister of Foreign Affairs as provided for in Article 3, the Minister of Justice shall, except in any of the following circumstances, forward the related documents to the Superintending Prosecutor of the Tokyo High Public Prosecutors Office and order him to apply to the Tokyo High Court for examination as to whether the case is one in which the fugitive can be surrendered:

- (1) When it is deemed to be clearly not a case in which the fugitive can be surrendered;
- (2) In the case of a treaty of extradition which provides that the determination as to whether the fugitive shall be surrendered is left to the discretion of Japan in a case falling under item (8) or (9) of Article 2, when the case clearly falls under one of these items and it is deemed to be inappropriate to surrender the fugitive;
- (3) In addition to cases falling under item (2) above, when a case falls under a provision of a treaty of extradition which leaves the determination as to whether the fugitive shall be surrendered to the discretion of Japan and it is deemed to be inappropriate to surrender the fugitive;
- (4) In the case of a request for surrender which is not made pursuant to a treaty of extradition, when it is deemed to be inappropriate to surrender the fugitive.

2. Before the Minister of Justice makes a finding as provided for in item (3) or (4) of paragraph 1 above, he shall consult with the Minister of Foreign Affairs.

- (6) Except in the case of a fugitive who has been convicted of an offense for which extradition is requested by a court of the requesting country, when there is no probable cause to suspect that the fugitive has committed an act which constitutes an offense for which extradition is requested;
- (7) When a criminal prosecution based on the act constituting an offense for which extradition is requested is pending in a Japanese court, or when a judgment in such a case has become nonappealable;
- (8) When a criminal prosecution for an offense committed by the fugitive other than an offense for which extradition is requested is pending in a Japanese court, or when the fugitive has been sentenced to punishment by a Japanese court for such an offense and the extradition of his sentence has not been completed or he may not yet no longer be subjected to the execution of the sentence;
- (9) When the fugitive is a Japanese national.

*(Steps taken by the Minister of Foreign Affairs upon of a request for surrender)*

*Article 3.*

When a request for the surrender of a fugitive is made, the Minister of Foreign Affairs shall, except in any of the following circumstances, forward to the Minister of Justice the written request or a certificate which he has prepared stating that the request for extradition has been made, together with the related documents:

- (1) When, in the case of a request which has been made pursuant to a treaty of extradition, it is deemed that the form of the request is not consistent with the requirements of the treaty of extradition;
- (2) When, in the case of a request which has not been made pursuant to a treaty of extradition, the requesting country has not assured that

committed.

4. As used in this Law, “fugitive” means a person against whom any measures in connection with a criminal case have been taken by a requesting country for an offense for which extradition is requested.

*(Restrictions on extradition)*

*Article 2.*

A fugitive shall not be surrendered in any of the following circumstances, provided that this shall not apply, in cases falling under items (3), (4), (8), or (9), when the treaty of extradition provides otherwise:

- (1) When the offense for which extradition is requested is a political offense;
- (2) When the request for extradition is deemed to have been made with a view to trying or punishing the fugitive for a political offense which he has committed;
- (3) When the offense for which extradition is requested is not punishable by death, or by imprisonment for life or a maximum term of three years or more by the laws, regulations or ordinances of the requesting country;
- (4) When the act constituting the offense for which extradition is requested would not be punishable under the laws, regulations or ordinances of Japan by death or by imprisonment with or without forced labor for life or for a maximum term of three years or more if the act were committed in Japan;
- (5) When it is deemed that under the laws, regulations or ordinances of Japan it would be impossible to impose or to execute punishment upon the fugitive, if the act constituting the offense for which extradition is requested were committed in Japan, or if the trial therefor were held in a court of Japan;

42. An offense relating to willful evasion of taxes and duties
43. An offense against the laws relating to the control of companies or other corporations
44. An offense against the laws relating to bankruptcy or rehabilitation of a company
45. An offense against the laws relating to prohibition of private monopoly or unfair business transactions
46. An offense against the laws relating to the control of exportation and importation or international transfer of funds
47. Attempt, conspiracy, assistance, solicitation, preparation for, or participation in, the commission of any of the abovementioned offenses

### Appendix 3

#### LAW OF EXTRADITION

( Laws No. 68 of 1953, as amended by Law No. 163 of  
1954, Law No. 86 of 1964 and Law No. 70 of 1978 )

#### *(Definitions)*

##### *Article 1.*

1. As used in this Law, “treaty of extradition” means a treaty concluded between Japan and a foreign country concerning the surrender of offenders.
2. As used in this Law, “requesting country” means a foreign country which has requested Japan to surrender an offender.
3. As used in Law, “offense for which extradition is requested” means any offense which a requesting country mentions in its request for the surrender of an offender as being an offense which the offender has

- power or other destructive means
26. Piracy according to the law of nations
  27. An offense relating to unlawful seizure or exercise of control of trains, aircraft, vessel or other means of transportation
  28. An offense interfering with or endangering the normal operation of trains, aircraft, vessel or other means of transportation
  29. An offense against the laws relating to the control of explosive substances, incendiary devices or dangerous or prohibited weapons
  30. An offense against the laws relating to the control of narcotic drugs, cannabis, psychotropic drugs, cocaine, or their precursors or derivatives, or other dangerous drugs or chemicals
  31. An offense against the laws relating to the control of poisons or other substances injurious to health
  32. An offense relating to forgery or counterfeiting
  33. An offense against the laws relating to the control of gambling or lotteries
  34. Assault or threat upon public official relating to the execution of his duty
  35. An offense relating to false statements
  36. An offense relating to perjury
  37. An offense relating to escape from confinement of a person detained or serving a sentence for an offense specified in paragraph 1 of Article 2 of this Treaty
  38. An offense relating to obstruction of justice, including harboring criminals and suppressing or destroying evidence
  39. Bribery
  40. An offense relating to abuse of official authority
  41. An offense against the laws relating to the control of public elections or political contributions and expenditures

or assistance

2. Assault made with intent to commit murder
3. Malicious wounding, injury or assault
4. Illegal abortion
5. Abandonment which causes bodily harm or death
6. An offense relating to kidnapping, abduction or unlawful arrest or imprisonment
7. Threat
8. Rape, indecent assault
9. An offense relating to pandering or prostitution
10. An offense relating to obscene material
11. Bigamy
12. Burglary
13. Robbery
14. Larceny
15. Extortion, blackmail
16. Fraud (obtaining property, money, valuable securities, or other things of economic value by false pretenses or by fraudulent means)
17. Embezzlement, breach of trust by a person who is in a fiduciary relationship
18. An offense relating to unlawfully obtained property
19. An offense relating to damage of property, documents, or facilities
20. An offense against the laws relating to protection of industrial property or copyright
21. Obstruction of business by violence or threat
22. Arson, burning through gross negligence
23. Leading, directing, or inciting a riot
24. An offense against the laws relating to protection of public health
25. An offense endangering public safety through explosion, water



*Article 16.*

1. This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged at Washington as soon as possible. It shall enter into force on the thirtieth day after the date of the exchange of the instruments of ratification.
2. This Treaty shall also apply to any offense specified in paragraph 1 of Article 2 committed before this Treaty enters into force.
3. On the entry into force of this Treaty, the Treaty of Extradition signed at Tokyo on April 29, 1886 and the Supplementary Convention of Extradition signed at Tokyo on May 17, 1906 between Japan and the United States of America shall terminate, provided that any extradition case pending in the requested Party at the time this Treaty enters into force shall remain subject to the procedures specified in the above-mentioned Treaty of Extradition and the Supplementary Convention of Extradition.
4. Either Contracting Party may terminate this Treaty at any time by giving six months' written notice to the other Party.

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

DONE in duplicate, in the Japanese and English languages, both equally authentic, at Tokyo, this third day of March, one thousand nine hundred and seventy-eight.

For Japan: Sunao Sonoda

For the United States of America: Michael J. Mansfield

**SCHEDULE**

1. Murder, manslaughter, including causing death through solicitation

by reason thereof, provided that expenses incurred for the transportation of the person ordered to be surrendered shall be paid by the requesting Party.

2. The requested Party shall not make any pecuniary claim against the requesting Party by reason of any compensation paid to a person sought for the damages caused to him by detention, examination or surrender under the provisions of this Treaty.

*Article 15.*

1. Each Contracting Party shall grant to the other Party the right to transport through its territory a person surrendered to the other Party by a third State on request made through the diplomatic channel except in any of the following circumstances:

- (1) When the criminal act which has given rise to the extradition would not constitute an offense under the laws of the Contracting Party through which transit is requested.
- (2) When the criminal act which has given rise to the extradition is a political offense or when appears that the request for extradition is made with a view to prosecuting, trying or punishing the person surrendered for a political offense. If any question arises as to the application of this provision, the decision of the Contracting Party through which transit is requested shall prevail.
- (3) When reasons of public order are opposed to transit.

2. In the case above, the Contracting Party to which extradition has been granted shall reimburse the Contracting Party through whose territory transportation has been made for any expenses incurred by the latter in connection with such transportation.

*Article 11.*

The requested Party, upon receiving requests from the other Contracting Party and from a third State or States for the extradition of the same person either for the same offense or for different offenses, shall determine to which of the requesting States it will extradite that person.

*Article 12.*

1. The requested Party shall promptly communicate to the requesting Party through the diplomatic channel the decision on the request for extradition.
2. If an order to surrender has been issued by the competent authority of the requested Party and the requesting Party fails to receive the person sought within such time as may be stipulated by the laws of the requested Party, it may set him at liberty and may subsequently refuse to extradite that person for the same offense. The requesting Party shall promptly remove the person received from the territory of the requested Party.

*Article 13.*

To the extent permitted under the laws of the requested Party and subject to the right of third parties, all articles acquired as a result of the offense or which may be required as evidence shall be surrendered if extradition is granted.

*Article 14.*

1. The requested Party shall make all necessary arrangements with respect to internal procedures, including the detention of the person sought, arising out of the request for extradition and bear the expenses

requesting Party to submit additional information before that authority determines whether to submit the request to a court of the requested Party. That authority may fix a time limit for the submission of such information.

*Article 9.*

1. In case of urgency the requested Party may provisionally detain the person to be sought when the requesting Party submits an application for provisional detention through the diplomatic channel, notifying the requested Party that a warrant of arrest has been issued or a sentence imposed for an offense for which extradition is to be granted in accordance with paragraph 1 of Article 2 and assuring the requested Party that a request for extradition will be made. The application for provisional detention shall describe the identity of the person to be sought and the facts of the case, and shall contain such further information as may be required by the laws of the requested Party.

2. If the requesting Party fails to present the request for extradition within forty-five days from the date of provisional detention, the person detained shall be set at liberty, provided that this stipulation shall not prevent the requested Party from instituting a proceeding with a view to extraditing the person sought if a request for extradition is subsequently received.

*Article 10.*

When a person sought advises a court or other competent authorities of the requested Party that he waives his right to internal procedures required for his extradition, that Party shall take all necessary measures to expedite the extradition to the extent permitted under its laws.

been convicted, it shall be accompanied by:

- (a) A copy of the warrant of arrest issued by a judge or other judicial officer of the requesting Party;
- (b) Evidence proving that the person sought is the person to whom the warrant of arrest refers; and
- (c) Such evidence as would provide probable cause to suspect, according to the laws of the requested Party, that the person sought has committed the offense for which extradition is requested.

4. When the request for extradition relates to a convicted person, it shall be accompanied by:

- (a) A copy of the judgment of conviction imposed by a court of the requesting Party;
- (b) Evidence proving that the person sought is person to whom the conviction refers; and
- (c) (i) A copy of the warrant of arrest, if the convicted person was not sentenced; or  
(ii) A copy of the sentence imposed and a statement showing to what extent the sentence has not been carried out, if the convicted person was sentenced.

5. The request for extradition shall be accompanied by all other information as may be required by the laws of the requested Party.

6. All the documents to be submitted by the requesting Party in accordance with the provisions of this Treaty shall be duly certified as required by the laws of the requested Party, and accompanied by a duly certified translation in the language of the requested Party.

7. If the executive authority of the requested Party considers that the information furnished in support of the request for extradition of a person sought is not sufficient to fulfill the requirements of this Treaty, that authority shall so notify the requesting Party, in order to enable the

cumstances, detain, prosecute, try nor punish a person surrendered under this Treaty for an offense other than that for which extradition has been granted, nor extradite him to a third State, provided that these stipulations shall not apply to offenses committed after the extradition:

- (1) When he has left the territory of the requesting Party after his extradition and has voluntarily returned to it.
  - (2) When he has not left the territory of the requesting Party within forty-five days from the day when he has been set free to do so.
  - (3) When the requested Party has consented to his detention, prosecution, trial or punishment for an offense other than that for which extradition has been granted or to his extradition to a third State.
2. The requesting Party may detain, prosecute, try or punish the person surrendered under this Treaty for any offense for which extradition is to be granted in accordance with paragraph 1 of Article 2, in so far as such measures are instituted upon the basic facts which constitute the offense for which extradition has been granted.

#### *Article 8.*

1. The request for extradition shall be made through the diplomatic channel.
2. The request for extradition shall be accompanied by:
  - (a) Documents which describe the identity of the person sought;
  - (b) A statement of the facts of the case;
  - (c) The texts of the laws describing the essential elements and designation of the offense for which extradition is requested;
  - (d) The texts of the laws describing the punishment for the offense; and
  - (e) The texts of the laws describing the time limit on the prosecution or the execution of punishment for the offense.
3. When the request for extradition relates to a person who has not yet

ment in a third State for the offense for which extradition is requested.

3. When the person sought has been prosecuted or has not undergone the execution of punishment in the territory of the requested Party for an offense other than that for which extradition is requested, the requested Party may defer his surrender until the conclusion of the trial and full execution of any punishment he maybe or may have been imposed.

*Article 5.*

The requested Party shall not be bound to extradite its own nationals, but it shall have the power to extradite them in its discretion.

*Article 6.*

1. When the offense for which extradition is requested has been committed outside the territory of the requesting Party, the requested Party shall grant extradition if the laws of that Party provide for the punishment of such an offense committed outside its territory, or if the offense has been committed by a national of requesting Party.

2. For the purposes of this Treaty, the territory of a Contracting Party means all areas of land, water and airspace under the sovereignty or authority of that Contracting Party, including any vessel registered in that Contracting Party, and any aircraft registered in that Contracting Party provided that the aircraft is in flight. For the purposes of this provision an aircraft shall be considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation.

*Article 7.*

1. The requesting Party shall not, except in any of the following cir-



prove either that there is probable cause to suspect, according to the laws of the requested Party, that the person sought has committed the offense for which extradition is requested or that the person sought is the person convicted by a court of the requesting Party.

*Article 4.*

1. Extradition shall not be granted under this Treaty in any of the following circumstances:

- (1) When the offense for which extradition is requested is a political offense or when it appears that the request for extradition is made with a view to prosecuting, trying or punishing the person sought for a political offense. If any question arises as to the application of this provision, the decision of the requested Party shall prevail.
- (2) When the person sought has been prosecuted or has been tried and convicted or acquitted by the requested Party for the offense for which extradition is requested.
- (3) In the case of a request for extradition emanating from Japan, when the prosecution of the offense for which extradition is requested would be barred by lapse of time, under the laws of the United States.
- (4) In the case of a request for extradition emanating from the United States, when the imposition or the execution of punishment for the offense for which extradition is requested would be barred by reasons prescribed under the laws of Japan, including lapse of time;
  - (a) if Japan were to have jurisdiction over the offense, or
  - (b) if Japan in fact has such jurisdiction and the trial were to be held in its court.

2. The requested Party may refuse extradition when the person sought has been tried and acquitted, or has undergone the execution of punish-

territory and sought by the other Party for prosecution, for trial, or to execute punishment for any offense specified in paragraph 1 of Article 2. When the offense was committed outside the territory of the requesting Party, the conditions specified in paragraph 1 of Article 6, *inter alia*, shall be applied.

*Article 2.*

1. Extradition shall be granted in accordance with the provisions of this Treaty for any offense listed in the Schedule annexed to this Treaty, which forms an integral part of this Treaty, when such an offense is punishable by the laws of both Contracting Parties by death, by life imprisonment, or by deprivation of liberty for a period of more than one year; or for any other offense when such an offense is punishable by the laws of Japan and the federal laws of the United States by death, by life imprisonment, or by deprivation of liberty for a period of more than one year.

Extradition shall be granted for any offense of which one of the above mentioned offenses is a substantial element, even if, for purposes of granting federal jurisdiction to the United States Government, interstate transporting, or the use of the mails or other interstate facilities is also an element of the specific offense.

2. In the case in which the person sought has been sentenced by a court of the requesting Party for any offense to which paragraph 1 applies, extradition shall be granted only if the person has been sentenced to death or if the sentence remaining to be served is at least four months.

*Article 3.*

Extradition shall be granted only if there is sufficient evidence to

interfere with ongoing investigations or legal proceedings, criminal, civil and administrative, in the requested state.

10. Nothing contained herein shall limit the rights of the parties to utilize for any purpose information which is obtained by the parties independent of these procedures.

11. The mutual assistance to be rendered by the parties pursuant to these procedures is designed solely for the benefit of their respective agencies having law enforcement responsibilities and is not intended or designed to benefit third parties, or to affect the admissibility of evidence under the laws of either Japan or the United States.

Done at Washington, D.C. this twenty-third day of March, 1976.

For the Ministry of Justice of Japan:

For the United States Department of Justice:

## Appendix 2

### TREATY ON EXTRADITION BETWEEN JAPAN AND THE UNITED STATES OF AMERICA

(Treaty No. 3 of 1980)

Japan and the United States of America,

Desiring to make more effective the cooperation of the two countries for the repression of crime,

Have agreed as follows:

#### *Article 1.*

Each Contracting Party undertakes to extradite to the other Party, in accordance with the provisions of this Treaty, any person found in its

no law enforcement responsibilities. Disclosure to other agencies having law enforcement responsibilities shall be conditioned on the recipient agency's acceptance of the terms set forth herein.

In the event of breach of confidentiality, the other party may discontinue cooperation under these procedures.

5. Information made available pursuant to these procedures may be used freely in ensuing legal proceedings, criminal, civil and administrative, in the requesting state in which an agency of the requesting state having law enforcement responsibilities is a party, and the parties shall use their best efforts to furnish the information for purposes of such legal proceedings in such form as to render it admissible pursuant to the rules of evidence in existence in the requesting states, including, but not limited to, certifications, authentications, and such other assistance as may be necessary to provide the foundation for the admissibility of evidence.

6. The parties shall give advance notice prior to the institution of legal proceedings, criminal, civil and administrative, in which information made available pursuant to these procedures is intended to be used.

7. The parties shall use their best efforts to assist in the expeditious execution of letters rogatory issued by the judicial authorities of their respective countries in connection with legal proceedings, criminal, civil and administrative, which may ensue in their respective countries.

8. The assistance to be rendered to a requesting state shall not be required to extend to such acts by the authorities of the requested state as might result in the immunization of any person from prosecution in the requested state.

9. All actions to be taken by a requested state will be performed subject to all limitations imposed by its domestic law. Execution of a request for assistance may be postponed or denied if execution would

## Appendix 1

### PROCEDURES FOR MUTUAL ASSISTANCE IN ADMINISTRATION OF JUSTICE IN CONNECTION WITH THE LOCKHEED AIRCRAFT CORPORATION MATTER

The Ministry of Justice of Japan and the United States Department of Justice, hereinafter referred to as "the parties", confirm the following procedures in regard to mutual assistance to be rendered to agencies with law enforcement responsibilities in their respective countries with respect to alleged illicit acts pertaining to the sales activities in Japan of the Lockheed Aircraft Corporation and its subsidiaries or affiliates.

1. All requests for assistance shall be communicated directly between the parties.
2. Upon request, the parties shall use their best efforts to make available to each other relevant and material information, such as statements, depositions, documents, business records, correspondence or other materials, available to them concerning alleged illicit acts pertaining to the sales activities in Japan of the Lockheed Aircraft Corporation and its subsidiaries or affiliates.
3. Such information shall be used exclusively for purposes of investigation conducted by agencies with law enforcement responsibilities and in ensuing legal proceedings, criminal, civil and administrative.
4. Except as provided in paragraph 5, all such information made available by the parties pursuant to these procedures, and all correspondence between the parties relating to such information and to the implementation of these procedures, shall be kept confidential and shall not be disclosed to third parties or to government agencies having

organized robbery, etc. by foreigners sharply increased from 431 cases in 1996 to 2,485 cases in 1998. 19 cases in which foreigners transmitted money earned by illegal employment or crimes to their home countries through underground bank during period from June 1997 to May 1999 were cleared which amounted to ¥180bil. (US\$1.7bil).

Japan's first antitrust cooperation agreement with the U.S.A. was signed in Washington, D.C. on October 7, 1999.

ment in illegal employment activities, and the smuggling of guns and drugs are currently the most serious transnational crimes and raise great concern as security threat to Japan's society. The Japanese police have vigorously tried to combat these transnational crimes through international cooperation with foreign investigating agencies and will continue to do so.

Recently, international cooperation among police agencies of the U.S.A., Taiwan and China solved two abductions of a Taiwanese and a Taiwanese American in the U.S.A. following a ransom demand to his father in Taiwan by a Chinese national. Despite no diplomatic relations between Taiwan and China, police officials in these lands communicated about the case on a hot line. The FBI agents serving as legal attaches in overseas U. S. missions also acted as advisors in these lands<sup>(25)</sup>. This case shows a possibility to successfully combat crimes by international cooperation among police agencies of countries with politically and economically different systems.

(25) Los Angeles Times of January 17, 1999.

#### <Postscript>

The JNPA stresses the necessity for establishing domestic mechanism to investigate transnational crimes through international cooperation with foreign investigating agencies, the importance of which has been confirmed at the recent Summit Conference at The 1999 White Paper on Police, entitled "Combat against Transnational Crime". According to it, in 1998, 21, 680 Penal Code cases involving foreigners were cleared (an increase by 25 times over 1980), and a total of 5, 382 foreigners were arrested (an increase by 7 times). In particular,



(23) *Supra* note 4 at 150, 167–8, 318–23.

### 3. Domestic Measures to Cope with Transnational Crimes

#### a. Strengthening International Investigating Capability

##### (i) Training of International Investigators

Investigation of transnational crimes, such as those involving foreigners in Japan, calls for thorough knowledge of international and domestic criminal law as well as methods of dealing with foreigners with different languages and ways of life, searches at time of entry and exit, and procedures for requesting cooperation of foreign investigating agencies through the ICPO. The NPA provide practical training in international investigation at the International Research and Training Institute attached to the National Police Academy.

##### (ii) Improvement of Interpreting Capability

Police personnel have long been trained in such foreign languages as English, Chinese and Korean. But the need for police officers to acquire proficiency also in such Asian languages as Tagalog (the Philippines), Thai and Urdu (Pakistan) is growing as more and more foreigners from Asian countries are involved in crimes as suspects and victims. Language barriers pose a serious problem in investigating offenses involving foreign visitors in Japan. To solve this problem, the NPA is striving to train international investigators and also recruiting interpreters to assist in interrogation<sup>(24)</sup>.

(24) *Id.* at 313–5.

### Summing Up

As we have observed, illegal landing, illegal overstaying, engage-

nars and training sessions, for example those held in 1995 were as follows:

the 1st International Seminar for Criminal Identification (Jan. 13–Oct. 25);

The 7th Seminar for Philippine Investigation Officers (Jan. 17–27);

The 7th Seminar on Measures to Deal with Organized Crime in Asia (Jan. 24–27);

The 3rd Seminar for Senior Police Officers in Latin American Countries (Jan.25–Feb.9), th 4th one (Oct. 2–20);

The 6th Police Seminar in Asian and African Areas (Feb. 21–24) where the police explained to 17 policemen from 10 countries about Japan's police box system ("Koban"), which has contributed to the security of Japanese society, and discussed the communication and command system with the result of talk of the role that can be played by local police in each country; Japan's police box system was transplanted to Singapore as the Neighborhood Police Post more than ten years ago. A seminar to compare both systems was held in Singapore in November at the request of its Government but by Japan's financial contribution, to which three Japanese policemen were dispatched for explanation;

The 1st Conference for Drug Control in Asian and Pacific Regions (March) held with participation of the ICPO, the UN Drug Control Program and 19 countries in Asia and Europe, in which the Japanese police aimed to strengthen mutual understanding and cooperation for drug control and investigation techniques;

The 16th International Seminar on Criminal Investigation (April 10–26);

The 7th Training of Senior Police Officers (May 15–August 4);

The 1st International Seminar on Gun Control (June 13–16);

The 34th Seminar on Crackdown of Drug-related Crimes (Oct. 12–26);

The 3rd Seminar on Measures against International Terrorism (each for 7 days in February, July and September), etc <sup>(23)</sup>.

At the 64th ICPO General Meeting held at Beijing in October 1995, a resolution for the control of guns, initiated by Japan where ordinary persons except policemen are prohibited from holding guns so that Japan is quite sensitive for prevention of smuggling guns, was unanimously adopted. The resolution aims to promote the exchange of gun information and to strengthen its cooperation with the UN and also gun control in member countries. In 1995, Japanese police participated in the ICPO's various conferences as follows: Committee Meeting on Information Technology (in France, March and September), the 1st International Conference on Computer Crimes (in France, April), Working Group on Environmental Crimes (in France, May), Conference on Heroin (in Turkey, June), Conference on Cocaine (in South Africa, July), Conference on Stimulant Drugs (in France, October) and the 5th International Symposium on Organized Crime (in France, December).

(ii) The UN

At the 9th UN Conference for Crime Prevention held at Cairo in April-May 1995, a resolution concerning "control of guns for crime prevention and security of society", which was initiated by Japan, was unanimously adopted by 29 concurrently supporting countries. A resolution implementing it was also adopted at the 4th UN Committee for Crime Prevention and Criminal Justice and ECOSOC. Survey for gun situation in the world started on the basis of this resolution. In 1995 Japanese police participated in the UN meetings such as Working Group on Maritime Cooperation relative to Drugs (in Australia, February) and the 38th Ordinary Meeting of Drug Committee (in Australia, March).

**b. Regional Police Cooperation**

The NPA has made strenuous efforts to promote the exchange of information for prevention of international crimes with neighboring countries by sponsoring and participating in various international semi-

**Table 8 Investigative Cooperation Conducted by Japanese Police at Request of the ICPO and Foreign Police Agencies (1986–1995)**

Year	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
Through ICPO (cases)	329	375	366	350	469	628	785	673	687	716
Through diplo- matic channels	14	6	8	9	1	1	17	6	9	10

Source: National Police Agency, The 1996 White Paper on Police, 316.

## 2. The Active Participation in International Police Cooperation by Japan

The Japanese police authorities have been vigorously engaged in multilateral and regional police cooperation.

### a. Multilateral Police Cooperation

Police have been positively participating in the ICPO and other international organizations and conferences to exchange information relative to the crime situation in various countries, to discuss police affairs requiring international approaches and to establish closer ties with foreign investigating agencies.

#### (i) The ICPO

Since joining the International Criminal Police Commission (the predecessor of ICPO) in 1952, the JNPA as its National Central Bureau has made a great contribution to strengthen the former's function. Japan's financial contribution to the ICPO's budget in Fiscal Year 1996 was as large as ¥145,000,000 (approximately US\$1,160,000), next to the U.S.A., accounting for 5.8 percent. Japan has technologically cooperated in modernizing ICPO's communication networks as its key station in the Asian region. As to personnel contribution, Mr. Toshinori Kanemoto, who is Director General of International Division of NPA, was fortunately nominated President of the ICPO in 1996, and four officers seconded from the NPA are also currently serving at the ICPO.

**Table 7 Breakdown by Investigative Agencies of Criminal Cases in which Japan was Asked for International Investigative Cooperation through Diplomatic Channels (1986–1995)**

Year	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	Total
Investigative Agencies											
Grand Total	14	14	19	18	13	14	18	22	20	21	173
National Police Agency	13	8	15	16	9	6	10	11	11	10	109
Public Prosecutors Offices	1	4	1	4	10	8	10	14	13	9	74
Ministry of Justice		2	4								6
Judicial Court		1								1	2

Remarks: As criminal cases commissioned from foreign countries were transmitted to plural investigative agencies of Japan, grand total does not necessarily coincide with the aggregate of individual cases.

Source: Research and Training Institute, Ministry of Justice, The 1996 White Paper on Crime, 453.

10 cases for the NPA, 9 for the PPO and 1 for court<sup>(22)</sup>. See Table 7.

(21) Law No. 69 of 1980. Appendix 4.

(21a) Treaty on Mutual Legal Assistance in Criminal Matters between Canada and the U.S.A. of 1985 provides that “Assistance shall be provided without regard to whether the conduct under investigation or prosecution in the Requesting State constitutes an offense or may be prosecuted by the Requested State” (emphasis added. Art. II, 3). This principle forwards the promotion of international criminal cooperation.

(22) *Supra* note 10 at 232.

How actively the NPA has transmitted to or received from foreign investigative agencies and the ICPO information relative to international crimes is shown on Table 5 and 8.

**Table 6 Number of Criminal Cases in which Japan was Asked for International Investigative Cooperation through Diplomatic Channels (1986–1995)**

Year	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	Total
Country											
Total	14	14	19	18	13	14	18	22	20	21	173
U.S.A.	4	7	10	10	8	6	5	11	12	12	85
%	28.6	50	52.6	55.6	61.5	42.9	27.8	50	60	57.1	49.1
Canada	3		1	1	1						6
U.K.				1	1	2	5	3	1		13
Hong Kong							2				2
France	1	2	1	2	2	3	1			2	14
Germany		3							2		5
Italy	1		1								2
Belgium	1										1
Austria	1										1
Greece			1								1
Switzerland										1	1
Sweden									2		2
Norway			1			1					2
Netherlands						1	1		1		3
Andorra										1	1
Russia			1					1			2
India	1			2							2
China					1		1		1	1	4
Korea							1	2	1	2	6
Philippines	1	1	1					1			4
Australia	1		1	2		1	2	4		1	12
Algeria		1									1
Rwanda			1								1
South Africa										1	1

Source: Research and Training Institute, Ministry of Justice, The 1996 White Paper on Crime, 452.

not provided in any of the following circumstances:

- (1) When the offense for which assistance is requested is a political offense, or when the request for assistance is deemed to have been made with a view to investigating a political offense;
- (2) When the act constituting the offense for which assistance is requested would not constitute an offense under the laws of Japan if the act were committed in Japan (principle of dual criminality)<sup>(21a)</sup>;
- (3) When the requesting country has not assured that it would honor a request of the same kind made by Japan (principle of reciprocity);
- (4) In case of a request for the examination of a witness or the submission of seizable evidentiary material, when the requesting country does not clearly demonstrate in writing that the evidence is indispensable to the investigation.

The number of cases in which other countries commissioned Japan, through diplomatic channels, to investigate during the same ten year period totaled 173, involving 24 countries and areas. The U.S.'s commission to Japan was the largest 85 (49.1 percent), followed by 14 for France, 13 for the U.K., and 12 for Australia, etc. During these ten years, the U.S.A. commissioned Japan for 85 criminal cases while Japan did so to the U.S.A. for 40 cases. As for the difference between requesting investigation assistance and providing such assistance, the U.S.A. was the largest net donor(40), followed by France (12), the U.K. (10) and Australia (8). On the other hand, the Philippines was the largest net recipient (5), followed by Thailand and Korea (each 4). See Table 6 together with Table 4.

Of 21 cases for investigation assistance such as the forwarding of evidence and examination of witnesses requested by eight countries in 1995, Japan carried out 13 cases. The investigating agencies to which the Minister of Justice forwarded these 21 cases, were broken down into



**Table 5 Transmission and Receipt of Information on International Crimes by National Police Agency (NPA) (1986–1995)**

Year	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
Classification										
Total (cases)	7,647	7,350	7,849	7,407	7,968	7,773	8,067	9,073	8,703	8,877
Transmission by NPA	1,453	1,590	1,751	1,674	1,760	1,511	1,661	1,894	1,605	1,727
Receipt by NPA	5,163	4,872	5,309	4,863	5,250	5,206	5,359	6,069	5,778	6,101
Receipt of international notices	1,031	888	789	870	958	1,056	1,047	1,110	1,320	1,049

Source: National Police Agency, The 1996 White Paper on Police, 315.

missions related to 5 cases were carried out to 4 foreign countries<sup>(19a)</sup>.

The NPA requests the ICPO (International Criminal Police Organization) and foreign investigative agencies as counterparts to provide information relative to the search for criminals. The amount of information on international crimes transmitted by the NPA in 1995 amounted to 1,727<sup>(20)</sup> while such amount from January to October 1996 already reached 1,573. See Table 5.

(19) *Supra* note 10 at 229–30. Of 53 cases commissioned by the PPO during a ten year period between 1984 and 1993, cases relating to foreign national suspects numbered 14, with one in 1984, two in 1986 and 1989 respectively, one in 1990, three in 1991, two in 1992 and three in 1993. See *supra* note 7 at 324–26.

(20) *Supra* note 4 at 315.

#### **b. Investigative Cooperation Requested to Japan from Abroad**

The requirements and procedures for investigative cooperation at the request of foreign countries through diplomatic channels or the ICPO to Japan are provided at the Law for International Assistance in Investigation<sup>(21)</sup>. Assistance, which means to “provide a requesting country with evidence necessary for it to investigate a criminal case”, is

4 for Thailand and Australia respectively. In 1995, the PPO requested investigative cooperation regarding 15 cases to 8 foreign countries, 8 of which were carried out, the NPA also commissioned concerning 5 cases<sup>(19)</sup>. See Table 4. As for the breakdown by kind of offense, homicide was the largest, followed by violation of the drug laws and fraud. Commissions for investigative cooperation concerning the violation of the drug laws has been made every year since 1990. In 1993, such com-

**Table 4 Number of Criminal Cases in which Japan Asked for International Investigative Cooperation to Foreign Countries (1986–1995)**

Year	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	Total
Country											
Total	3	2	3	6	5	8	9	16	17	15	84
U.S.A.	2		1	4	3	1	4	12	6	7	40
%	66.7		33.3	66.7	60	12.5	44.4	75	35.3	46.7	47.6
Brazil									1		1
U.K.		1					1		1		3
Hong Kong									2	1	3
France				1						1	2
Germany								1			1
Austria				1							1
Switzerland							1				1
Pakistan			1			1					2
Bangladesh						1					1
Iran								1			1
Thailand						1	1		1	1	4
Korea						2	1		4	1	8
Philippines	1	1			1	2	1		1	2	9
Singapore										1	1
Australia					1			1	1	1	4
New Zealand			1					1			2

Source: Research and Training Institute, Ministry of Justice, The 1996 White Paper on Crime, 451.

thirteen cases. The requests for extradition from the U.S.A. were ten cases with eleven fugitives, accounting for 78 percent of the total<sup>(18)</sup>. As for the difference between the number of fugitives extradited from Japan and to Japan, the U.S.A. was the largest net donor (9), Germany and Australia were respectively equivalent to Japan (each 1). See Table 3.

(17) Law No. 68 of 1953, as recently amended by Law No.89 of 1993. Appendix 3.

(18) *Supra* note 10 at 450.

## International Criminal Cooperation in Japan

### 1. Assistance in Investigation

Assistance in criminal investigation consists of (a) investigative cooperation commissioned by Japan to foreign countries and (b) investigative cooperation requested from abroad to Japan.

#### a. Investigative Cooperation Commissioned by Japan to Foreign Countries

Japan commissions other countries, through diplomatic channels, to investigate criminal matters at the request of the public prosecutors offices (PPO) or the National Police Agency (NPA). Such requests are transmitted through the following channels: PPO → Ministry of Justice (MOJ) or NPA → Ministry of Foreign Affairs → Japanese Embassy or Consulate abroad → Department of External Affairs at the requested country → Investigative Agency of the concerned State to carry it out. The number of criminal cases in which Japanese PPO requested foreign investigative agencies to assist in inquiring witness and gathering evidence during recent ten year between 1986 and 1995 totaled 84 involving 17 countries. The number of such commissions by Japan and requested countries is gradually increasing. Japan's commissions to the U.S.A. was the largest 40 (47.6 percent), followed by 9 for Philippines, 8 for Korea,

Justice the written request after examining whether the requesting country honors the principle of reciprocity in case of a request which has been made pursuant to a treaty of extradition. Upon receiving related documents from the former, the latter forwards them to the Superintending Prosecutor of the Tokyo High Public Prosecutors Office and orders him to apply to the Tokyo High Court for examination as to whether the case is one in which they can be extradited.

The number of fugitives that Japan extradited to other countries during the recent ten year period between 1986 and 1995 totaled 14 in

**Table 3 Fugitives Extradited from Japan to Abroad**

Year	Number of Cases	Number of Fugitives	Requesting Countries	Offenses
1986	1	1	U.S.A.	violation of copyright
1987	0	0		
1988	1	1	U.S.A.	fraud
1989	1	1	U.S.A.	import of heroin
1990	3	3	China	hijack of airplane
			U.S.A.	import of heroin
			U.S.A.	fraud
1991	0	0		
1992	2	3	U.S.A.	bribery
			U.S.A.	selling cocaine
1993	2	2	Australia	handing stolen goods
			Germany	fraud, use of forged coins
1994	1	1	U.S.A.	murder
1995	2	2	U.S.A.	smuggling, handling counterfeited goods
			U.S.A.	holding cocaine to sell

Source: Research and Training Institute, Ministry of Justice, The 1996 White Paper on Crime, 450.

States than the U.S.A. The requirements and procedure for it are based on the laws of the requested country.

The number of fugitives extradited to Japan at the request of both the Japanese public prosecutors offices and National Police Agency during the recent ten year period between 1986 and 1995 totaled 6, in six cases (each three cases): one from Germany in 1989 for fraud, one from Australia in 1991 for violation of income tax law, one from Italy, two from the U.S.A. (one of them for violation of corporate tax law) in 1993 and one from Brazil in 1994<sup>(16)</sup>.

(15) Treaty on Extradition between Japan and the United States of America, Treaty No.3 of 1980. Appendix 2.

(16) *Supra* note 7 at 321 and *supra* note 10 at 227.

The requirements and procedures for extradition at the request of foreign countries through diplomatic channels to Japan are provided in the Extradition Law of 1953<sup>(17)</sup>. This Law also provides for the cases where extradition is not granted, like the above-mentioned Treaty. However, there are some subtle differences between them as follows: While the offenses not punishable by the law of both Contracting Parties by deprivation of liberty for a period of more than one year are not extraditable under the Treaty, those not punishable by imprisonment for a maximum term of more than three years by the laws of the requesting country are not extraditable under the Act. Although the Law provides the principle that a fugitive, who is a Japanese national, is not surrendered, the Treaty admits the requested Party's discretion for extradition. Despite such differences, the Treaty prevails.

When a request for the extradition of a fugitive is made from abroad to Japan, the Minister of Foreign Affairs forwards to the Minister of

the Schedule annexed to it, when such an offense is punishable by the laws of both Contracting Parties by death, life imprisonment or deprivation of liberty for a period of more than one year (Art. II). Such offenses include not only Penal Code offenses such as murder, kidnapping, robbery, fraud, etc. but also Special Law offenses such as those against intellectual property law, drug laws, tax laws, anti-trust laws, export-import control laws, etc. Extradition is granted “only if there is sufficient evidence to prove either that there is probable cause to suspect, according to the laws of the requested Party, that the person sought has committed the offense for which extradition is requested or that the person sought is the person convicted by a court of the requesting Party”. On the other hand, extradition is not granted in any of the following circumstances:

- (1) When the offense for which extradition is requested is a political offense or when it appears that the request for extradition is made with a view to prosecuting, trying or punishing the person sought for a political offense;
- (2) When the person sought has been prosecuted, tried, convicted or acquitted by the requested Party for the offense for which extradition is requested;
- (3) When the prosecution of the offense for which extradition is requested would be barred by lapse of time, under the law of the requested Party.

The requested Party may refuse extradition when the person sought has been tried and acquitted in a third State for the offense for which extradition is requested. The requested Party is not bound to extradite its own nationals, but it may have discretion to do so.

Fugitives may be extradited by the discretion of the requested country on the basis of “comity of nations” between Japan and other

and bribery) and 9 (including 4 Japanese) for violent offenses (assault, bodily injury and extortion). Next, 118 suspects of the Special Law offenses (including 35 Japanese), those of the drug laws were the largest, 81 (including 13 Japanese), followed by 17 (including 12 Japanese) for the firearms and swords law and 7 (including 2 Japanese) for the immigration law. As for countries to which these suspects were assumed to have escaped: 39 suspects to Taiwan, 35 to Philippines, 22 (including one Japanese) to Hong Kong, 21 (including 2 Japanese) to Korea and 20 (including 3 Japanese) to the U.S.A.

Among 155 suspects (including 43 Japanese), whose departure date is known, as for the breakdown by the period between date of offense and departure from Japan, 6 (including no Japanese) the same day of the offense, 19 (including 6 Japanese) the next day, 12 (including 2 Japanese) two days later, totaling 68 (43.9 percent) within 10 days and 91 (58.9 percent) within 30 days<sup>(14)</sup>. In order to prevent fugitive offenders from fleeing abroad, the police had arranged for the arrest of suspects before departure at ports or airports. Even if they might escape abroad, police tried to identify the place where suspects were staying through cooperation for investigation by the concerned States and the ICPO<sup>(14)</sup>.

(14) *Supra* note 7 at 318-20; *supra* note 4 at 311.

## 2. Extradition

A means to secure fugitive offenders abroad is extradition through diplomatic channels at the request of either public prosecutors offices or National Police Agency. Otherwise, fugitive offenders abroad may be secured by their voluntary return to Japan or expulsion by foreign police authority. Japan has concluded a treaty on extradition with only the U.S.A.<sup>(15)</sup> Extradition is granted by this Treaty for any offenses listed in



for 5.2 percent.

On the other hand, the number of Japanese victims of crimes overseas was 6,766 in 1995. Among 6,148 cases, robbery, larceny and fraud accounted for 97.2 percent. Among these victims, 18 were killed.

The number of overseas Japanese detainees as of 1 January 1997 was 109 in total. As for the breakdown by area of incarnation, Asia accounted for 66 percent, and North America for 22 percent. Next, as for the breakdown by type of offense, drugs accounted for approximately 40 percent<sup>(13)</sup>.

(13) Document of 1 March 1997, Section of Japanese Protection, Ministry of Foreign Affairs; *supra* note 10 at 28.

## II. Japan's Present Situation of International Cooperation in Criminal Matters

### A. Fugitive Offenders Abroad and Extradition

#### 1. Fugitive Offenders Abroad

The number of suspects who committed crimes in Japan and escaped abroad has recently increased, and was 306 in 1993, an increase of 19 (6.6 percent) over the previous year. As for the breakdown by nationality, Japanese were the largest, 82 (26.8 percent), followed by 41 Taiwanese (13.4 percent), 40 Chinese (13.1 percent), 22 Koreans (7.2 percent), 21 Hong Kong Chinese (6.9 percent). Asian nationalities excluding Japanese were 192, accounting for 62.7 percent.

Among 188 suspects of Penal Code offenses (including 47 Japanese), felonious offenses (homicide, robbery, arson and rape) were the largest, 81 (including 3 Japanese), followed by 50 (including 31 Japanese) for intellectual offenses (fraud, embezzlement, forgery and counterfeiting,

were seized. As for the breakdown by manufacturing country, the U.S.A. was the largest, 591 (34.7 percent), followed by 304 China (17.9 percent), 169 Philippines (7.1 percent), 91 Brazil (5.3 percent), 75 Italy (4.8 percent), 50 Spain (2.9 percent), 48 Germany (2.8 percent), 293 others. Its smuggling route has been diversified into Russia, China, South Africa and Peru, etc. as well as the U.S.A. and Philippines, etc<sup>(12)</sup>.

(12) *Supra* note 4 at 156-162. See also *Supra* note 7 at 249 and its English summary at 26.

As we have observed, smuggling of guns and drugs with result of money laundering and illegal entry into Japan for the purpose of engaging in illegal employment activities are serious crimes of international type occurring in Japan. In particular, illegal entry is the most serious one to Japanese society. However, illegal immigration is not phenomenon peculiar to Japan, but also common phenomena occurring at borders between the U.S.A. and Mexico, and between Western and Eastern Europe. The big difference of wage level between rich countries and poor countries is real cause for such illicit conduct. Thus, how to raise wage level at poor countries is the most important remedy for preventing such crime.

## B. Overseas Japanese Offenders and Victims of Crime

The number of perpetrators abroad who were Japanese was 365 in fiscal year 1995. As for the breakdown by type of offense, violation of passport and visa accounted for 28.5 percent, drugs for 19.5 percent, robbery and larceny for 9 percent, fraud for 7.9 percent, bodily injury for 5.5 percent, violation of the Foreign Exchange Act and the Customs Law

(10) This ratio in 1995 increased to 3.8 percent. See the 1996 White Paper on Crime 71.

(11) *Supra* note 7 at 240-44.

### 3. Crimes by Visiting Foreigners with the Purpose of Committing Crimes in Japan

Crimes by international professional criminal groups for larceny, fraud, etc. and the smuggling of drugs and guns belongs to this type of crime. The number of visiting foreigners among offenders referred to the public prosecutors offices in 1995 for violating drug control laws is broken-down by the type of drugs as follows:

- (a) 485 for the Stimulant Drugs Control Law. As for the breakdown by nationality, 285 Philipinos were the largest (58.8 percent), followed by 120 Iranians (24.7 percent), 25 Koreans (5.2 percent), 8 Americans (1.6 percent);
- (b) 178 for the Cannabis Control Law. 90.6 kg cannabis was seized. As for the breakdown by nationality, 69 Iranians were the largest (38.8 percent), followed by 12 Americans (6.7 percent), 9 Philipinos (5.1 percent), 8 Thais (4.5 percent);
- (c) the Narcotic Drugs Control Law, (i) 40 for cocaine, mainly from Latin America. As for the breakdown by nationality, 17 Iranians (42.5 percent), followed by 12 Colombians, 4 Peruvians, etc.; (ii) 51 for heroin (72.7 percent of total offenders referred). For example, 19 Vietnamiense and one Iranian were arrested with seizure of 25g heroin in June;
- (d) 52 for the Opium Law. 42 Iranians were the largest (80.8 percent). For example, the smuggling of 3.5kg opium by a Singaporean from Malaysia in November. With respect to violations of the Firearms and Swords Control Law in the same year 1,702 pistols

Table 2 Foreign Visitors Arrested for Penal Code Offenses Classified by Country and Region

Case/Person Country/Region	1990		1991		1992		1993		1994		1995	
	Cases	Persons	Cases	Persons	Cases	Persons	Cases	Persons	Cases	Persons	Cases	Persons
Grand total	4,064	2,978	6,990	4,813	7,457	5,961	12,771	7,276	13,687	7,183	17,213	6,527
Asia (subtotal)	3,451	2,497	5,832	3,881	6,099	4,759	9,829	5,761	10,239	5,621	13,181	5,081
%	84.9	83.8	83.4	80.6	81.8	79.8	76.9	79.2	74.8	78.3	76.6	77.8
China	1,841	1,288	2,204	1,732	2,417	1,933	3,685	2,668	4,845	2,942	7,828	2,919
Korea	662	517	1,886	728	1,254	876	1,858	987	1,793	775	1,574	752
Iran	121	99	590	561	862	771	846	544	686	294	380	167
Philippines	328	151	447	214	381	259	1,254	366	713	396	633	301
Vietnam	90	79	117	110	303	176	495	200	223	198	693	252
Malaysia	69	69	148	136	296	224	558	309	671	256	634	169
Thailand	79	54	128	119	197	158	387	260	328	223	607	213
Pakistan	97	102	87	84	121	111	131	86	204	87	227	59
Bangladesh	21	19	27	28	46	45	48	48	35	28	57	30
Others	146	119	202	169	212	206	567	293	741	422	548	219
America (subtotal)	331	258	524	500	907	801	2,187	1,016	2,965	1,131	3,551	1,027
U. S.A.	180	127	185	191	195	162	187	153	280	161	351	135
Peru	26	18	61	68	331	310	1,449	470	1,618	470	1,170	386
Brazil	70	53	160	134	222	174	344	223	587	301	1,503	318
Others	55	60	118	107	159	155	207	170	480	199	527	188
Europe (subtotal)	166	155	436	322	292	285	403	344	353	322	321	321
Russia	33	39	127	132	134	146	222	188	147	149	155	158
U. K.	56	46	72	76	72	62	53	54	71	61	51	55
France	15	15	62	24	22	23	26	25	28	27	25	25
Others	62	55	175	90	64	54	102	77	107	85	90	83
Africa (subtotal)	71	27	127	37	62	44	256	68	65	49	100	36
Nigeria	54	14	100	10	32	15	216	33	41	21	8	5
Others	17	13	27	27	30	29	40	35	24	28	92	31
Oceania	43	38	71	73	95	70	92	86	65	59	57	58
Unknown nationality	2	3	0	0	2	2	4	1	0	1	3	4

Source: National Police Agency, The 1996 White Paper on Police, 301.

Japan, excluding permanent residents, personnel of the U.S. Armed Forces) amounted to 7,276 in 1993, accounting for 2.4 percent<sup>(10)</sup> of the total number 297,725 of Penal Code offenses cleared by police. This crime rate is relatively high in comparison with these foreigners' ratio to Japan's total population (0.9 percent). As for the breakdown by category of offense, larceny accounted for 54.9 percent and conversion of lost articles for 30.5 percent. These two offenses together composed the majority, nearly 90 percent of the cleared Penal Code offenders who were visiting foreigners. Next, as for the breakdown by nationality, nearly 80 percent were from Asian countries. Among them, 2,668 Chinese were the largest (36.6 percent), followed by 987 Koreans (13.5 percent), 544 Iranians (7.5 percent), 366 Philipinos (5.0 percent), 309 Malaysians (4.2 percent), 260 Thais (3.6 percent), 200 Vietnamese (2.7 percent) and 86 Pakistanis (1.2 percent). See Table 2.

The number of Special Law offenders (excluding violators of the Road Traffic Act) referred to the public prosecutors offices with respect to visiting foreigners amounted to 5,191 in 1993, which accounted for 7 percent of the total number 73,915 of Special Law offenders referred. As to the breakdown by category of offense, violators of the Immigration Control and the Refugee Recognition Law accounted for the largest (69.7 percent), followed by Anti-Prostitution Law violators (8.1 percent), Stimulant Drugs Control Law violators (5.5 percent), Cannabis Control Law violators (4.7 percent), etc. Next, as for the breakdown by nationality, 90 percent was from Asian countries. Among them, 1,410 Thais were the largest (27.2 percent), followed by 770 Chinese (14.8 percent), 725 Iranians (13.9 percent), 548 Koreans (10.6 percent), 501 Philipinos (9.7 percent), 342 Malaysians (6.6 percent), 142 Pakistanis (2.7 percent), etc<sup>(11)</sup>.

Malaysians (9.2 percent), 1,732 Peruvians (9.0 percent), 1,388 Thais (7.2 percent), 1,235 Chinese (6.4 percent), 1,155 Philipinos (6.0 percent), 777 Colombians (4.0 percent), 628 Taiwanese (3.3 percent), 504 Turkish (2.6 percent) and 439 Americans (2.3 percent). These ten nationalities accounted for 72.3 percent of the total. With regard to the breakdown by the reason of denials of landing, false notification of objectives was the largest, 12,802 (66.7 percent), followed by use of forged passports and visas, 3,612 (18.8 percent)<sup>91</sup>.

To reduce the number of foreigners illegally staying in Japan, it is necessary to crack down on crimes which encourage illegal stays, such as group smuggling, employment-related offenses and the forgery of passports. For this purpose, the NPA is working closely with the Ministry of Justice, the Ministry of Foreign Affairs and other organizations to round up those illegally staying in Japan, to intensify the examination of entrants into Japan and to suspend measures to allow entry without visa.

(7) *Supra* note 3 at 2. See also Research and Training Institute, Ministry of Justice, The 1994 White Paper on Crime, 239.

(8) Asahi Newspaper of 12 March 1997.

(9) *Supra* note 7.

As we have observed, the majority of offenders attempting to enter Japan with the purpose of illegally engaging in employment activities are people from Asian countries, the wage levels of which are significantly lower than that of Japan.

## 2. General Offenses Committed in Japan by Visiting Foreigners

The number of Penal Code offenses (excluding traffic professional negligence) committed by visiting foreigners (foreigners staying in

China after demanding 35 million yen (approximately US\$286,885), seem not yet to have been arrested <sup>(6a)</sup>.

(6) Ministry of Justice, Press Release of 22 March 1997.

(6a) Japan Times of 12 February 1997.

### c. Illegal Engagement in Employment Activities

The number of foreigners who were expelled in 1995 on the ground of illegally engaging in employment activities amounted to 49,434. These groups are comprised of those persons engaged in unqualified employment activities without permission, in addition to illegal entrants and those overstaying with the purpose of engaging in employment activities. As for the breakdown by nationality, 10,529 Koreans (21.3 percent) were the largest, followed by 7,595 Chinese (15.4 percent), 6,948 Thais (14.1 percent), 5,476 Philipinos (11.1 percent), 5,260 Malaysians (10.6 percent), 3,246 Iranians (6.6 percent), 2,475 Peruvians (5 percent), 1,326 Pakistanis (2.7 percent), 955 Myanmars (1.9 percent) and 831 Bangladeshis (1.7 percent)<sup>(7)</sup>. Some of these expelled persons tried to land again in Japan in order to pay their owed debts. One of them, who were expelled twice from Japan are said to have attempted suicide in China<sup>(8)</sup>.

These foreigners, who wish to illegally engage in employment activities, usually pretend to be temporary visitors and sometimes with the guise of marriage with Japanese national by using forged passport or documents, or a third person's passport. In 1995, the number of foreigners whose landings were denied by immigration officers at airports, etc. by reason of not satisfying requirements for landing, amounted to 19,199. As for the breakdown by nationality, 4,264 Koreans composed the largest in number (22.2 percent), followed by 1,768



after expiration of a visiting or student visa amounted to 282,986 as of 1 January 1997. As for the breakdown by nationality, 52,387 Koreans were the largest (15.8 percent), followed by 42,547 Philipinos (15 percent), 39,513 Thais (13.9 percent), 38,296 Chinese (13.5 percent), 12,942 Peruvians (4.6 percent), 11,303 Iranians (3.9 percent), 10,390 Malaysians (3.7 percent), 9,409 Taiwanese (3.3 percent), 6,197 Bangladeshis (2.2 percent), 5,900 Myanmars (2.1 percent) and 5,157 Pakistanis (1.8 percent)<sup>(6)</sup>. These eleven nationalities—mainly Asian—accounted for 82.7 percent of the total. Among illegally overstaying foreigners, 3 cases of kidnapping for ransom targeted at wealthy compatriots occurred with arrest of 14 persons in 1995. On 8 February 1997 a transnational criminal case occurred in which one overstaying Chinese and three illegally landed Chinese were abducted in Japan by six Chinese illegal entrants and the father of one of hostages paid some of the ransom money in China. This case is interesting from viewpoint of international police cooperation. The Japan National Police Agency (JNPC) which is nominated as its National Central Bureau of the ICPO tried to contact its Chinese counterpart in order to prevent the payment of ransom money in China, but in vain due to New Year Holiday according to the lunar calender. Therefore, the Metropolitan Police Department (MPD) of Japan directly called up the local police authorities at Fujian province in China on several occasions resulting in the exchange of information, but without the exchange of detailed information suitable for investigation. Due to the failure of simultaneously effective investigation by both countries, the Japan MPD was obliged to pinpoint by itself the hideout in Tokyo by tracing a large number of international telephone calls made by gang members coordinating this transnational crime with the result of arresting six abductors and rescuing four victims. Two Chinese, who received a ransom of only 2.8 million yen (approximately US\$22,950) in

where the wage level is higher than China by twenty times. This is partly because the U. S. immigration policy has been tightened to Chinese immigrants so that they are not easily allowed to pretend to be political refugees. Partly because the forecast of possible decline of wage level in Hong Kong after its return to China also expedited such drastic increase of Chinese illegal entrants<sup>(5)</sup>. At any rate, illegal immigrants, who owe large amount of debts to the Snakeheads, are obliged to work hard in Japan. Abduction for securing unpaid debts has sometimes occurred.

In order to prevent such recently drastic increase of illegal Chinese entrants, the Government of Japan has requested the Government of China to strengthen control over the procedure for departure from China and the coastal guard, with the result of consultation between both governments in March 1997. The Japanese Government also submitted in April 1997 to the Diet a bill to amend the Immigration Control and the Refugee Recognition Law by which those who assisted illegal entrants en masse shall be punished with imprisonment not exceeding ten years and a fine not exceeding 5 million yen (approximately US\$40,000).

(4) Ministry of Justice, Press Release of 28 February 1997. According to National Police Agency, The 1996 White Paper on Police 304, illegal entrants with the purpose of illegally engaging in employment activities, who were arrested by police in 1995, amounted to 324. As for the breakdown by nationality, 151 Chinese were the largest, followed by 55 Vietnamese, 44 Bangladeshi, 40 Myanmar, 23 Pakistanis and 10 Philipinos.

(5) Japan Economic Newspaper of 4 March 1997.

#### **b. Illegal Overstaying**

The number of foreign residents who illegally overstayed in Japan

(employment)<sup>(3)</sup>. Such decrease is attributed to strict law enforcement and the stagnation of Japan's economy.

(3) Ministry of Justice, Press Release of 23 June 1996, 1.

**a. Illegal Entry or Landing**

The number of illegal entrants en masse by ships into Japan, who were arrested at the border and expelled in 1996, amounted to 1,070. Such number by January–February 1997 had already reached 804, respectively 260 in January and 544 in February in which the latter increased twice. The number of those illegal entrants for only three months from December 1996 to February 1997 amounted to 1,068, which is almost equivalent to 1,070 for the whole year of 1996. Among them, Chinese occupied as many as 901 for such three months, respectively 258 in December 1996, 192 in January and 451 in February 1997<sup>(4)</sup>. These Chinese illegally entered Japan aboard small fishing boats which are the typical means of transportation used by a Chinese mafia group called as the Snakeheads. The Snakeheads, via an illegal travel agent largely based in China and Hong Kong, are said to be behind the recent drastic increase of illegal Chinese immigrants crossing the Sea of Japan. An illegal immigrant has to pay three or four million yen (approximately US \$24,000 ~ 32,000) for a voyage to Japan. It is estimated that the Snakeheads earn huge profit as much as 50 million yen (approximately US\$400,000) from just one voyage. While such payment was formerly done before their departure from China, now the parents of illegal entrants pay after confirming their arrival at Japan. Such a shift in payment method of transportation cost facilitates illegal landing. The Snakeheads flatter would-be immigrants by telling them that they could earn extremely high wages through in employment activities in Japan

**Table 1 Number of Foreign National Entrants and Foreign Nationals Arrested in Japan Violating the Penal Code (1989–1995)**

Classification	Year	1989	1990	1991	1992	1993	1994	1995
Number of foreign visitors (1,000 persons)		2,986	3,504	3,856	3,926	3,747	3,831	3,732
Number of violations (cases)		3,572	4,064	6,990	7,457	12,771	13,321	17,213
Number of persons arrested		2,989	2,978	4,813	5,961	7,276	6,989	6,527

Source: National Police Agency, The 1996 White Paper on Police, 298.

## **A. Crimes Committed in Japan by Visiting Foreigners**

Crimes pertaining to entering aliens are classified into three types: (1) crimes relating to entry with the purpose of illegally engaging in employment activities, (2) general offenses committed in Japan by visiting foreigners and (3) crimes by visiting foreigners with the purpose of committing crimes in Japan before arrival.

### **1. Crimes Relating to Entry with the Purpose of Illegally Engaging in Employment Activities**

This type of crime consists of (a) illegal entry or landing, (b) illegal overstaying, and (c) illegal engagement in employment activities. In 1995, the total number of foreigners, who were expelled on the ground of violating the Immigration Control and the Refugee Recognition Law, amounted to 55,470. With respect to the breakdown by the type of violations, overstays were the largest, 49,453 (89.2 percent), followed by illegal landings of 4,663 (8.4 percent). Among them, those illegally engaged in employment activities were 49,434, accounting for 89.1 percent of the total foreigners subjected to expulsion orders. These numbers decreased by approximately 20 percent from those in 1993, respectively 70,404 (total), 5,227 (overstay), 796 (entry) and 64,341

shows the necessity of international cooperation in criminal investigation against transnational organized crimes caused by the globalization of economic activity.

This paper briefly describes the recent trend of transnational organized crimes and focuses primarily on international criminal cooperation in Japan.

- (1) It was originally enacted as early as in 1887, but was repealed in 1953 to be superseded by a new law.
  - (2) Procedures for the Mutual Assistance in Administration of Justice in Connection with the Lockheed Aircraft Corporation Matter, concluded between the Ministry of Justice of Japan and the U.S. Department of Justice at Washington, D.C. on 23 March 1976. Appendix 1. See *Multinational Corporations and United States Foreign Policy*, Part 14, Hearings before the U.S. Senate Subcommittee on Multinational Corporations of the Committee on Foreign Relations, 94th Cong. 2nd Session (1976).
- \* This paper was originally written for the purpose of discussion at the Fourth International Police Executive Symposium held at Vienna on 20-23 May 1997.

## I. Recent Trend of Transnational Organized Crimes in Japan

Along with drastic expansion in the number of foreigners entering Japan which exceeds three million every year as well as increase in the number of Japanese going abroad, violations of the Immigration Control and the Refugee Recognition Law such as illegal entry en masse and illegal overstaying with purpose of illegally engaging in employment activities, and general offenses committed in Japan by visiting foreigners, and their escape abroad, crimes committed by Japanese abroad and smuggling of drugs and guns have sharply increased. See Table 1.

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**論 說**

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## International Criminal Cooperation in Japan\*

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### Introduction

In accordance with the recent rapid development of transportation means and communication systems and the remarkable increase of international intercourse in economic and social activity, offenses and offenders have been internationalized and transnational organized crimes have often occurred. To combat such transnational organized crimes, it has become much more necessary to develop “mutual legal assistance procedures aimed at facilitating and speeding investigations and collecting evidence” and to coordinate prosecutions by States with concurrent jurisdiction.

In 1980 Japan enacted the “Law for International Assistance in Investigation”, which added to the “Law for Judicial Assistance to Foreign Courts” of 1905 and the “Extradition Law”<sup>(1)</sup> of 1953. The direct momentum for its enactment in 1980 was that the letter rogatory by Japan to the United States on the basis of the Mutual Judicial Assistance Agreement of 1976 concluded in connection with the Lockheed bribery case<sup>(2)</sup>, which was released at the U.S. Senate Subcommittee on Multinational Corporations of Committee on Foreign Relations, significantly contributed to the success of the investigation in that case with the result of prevailing recognition of the importance of international criminal investigative assistance. This fact symbolically