BILATERAL

# SECOND PROTOCOL (1994) TO THE 1967 AGREEMENT ON ANTI-SMUGGLING COOPERATION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF MALAYSIA

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Reiterating the decision of the first meeting of the Philippines-Malaysia Joint Commission for Bilateral Cooperation held in Manila on 6-10 December 1993 to establish a Joint Committee on Border Cooperation between the two countries;

Considering the objectives of the Joint Committee on Border Cooperation which include the promotion of border cooperation for the purpose of facilitating and regulating the movement of people and goods and preventing illegal activities in the border areas between the Philippines and Malaysia;

Cognizant that the provisions of the 1967 Agreement on Anti-Smuggling Cooperation between the Government of the Republic of the Philippines and the Government of Malaysia (hereinafter known as "the Agreement") and the Protocol to the Agreement (hereinafter known as "the First Protocol") have to be modified so as to be more responsive to current needs and developments;

The States Parties to the 1967 Agreement on Anti-Smuggling Cooperation between the Government of the Republic of the Philippines and the Government of Malaysia, in accordance with their respective laws, hereby agree to amend the Agreement and its First Protocol.

Notwithstanding the provisions in the Agreement and the First Protocol, the Government of the Republic of the Philippines and the Government of Malaysia have agreed that the following amendments to the Agreement and the First Protocol be made by this Second Protocol (hereinafter known as "the Second Protocol").

A. The following provisions of the Agreement are amended as follows:-

> Paragraph 5
>
> The Authorities of both countries will inform each other about the arrival and departure of vessels owned or controlled by each other's citizens. Such information may include data regarding the name, tonnage, type, the owner of the vessel, inward and outward cargo, loaded or unloaded, members of the crew, passengers and other persons disembarked or on board, and any other relevant data which may be requested by the authorities of either country.
>
> Paragraph 8
>
> Paragraph 8 is deleted.
>
> Paragraph 9
>
> Paragraph 9(a) (i), (ii), (iii) and 9(b) are deleted. Paragraph 9(c) stands on its own as paragraph 9.
>
> Paragraph 10



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Paragraph 10 is renumbered as paragraph 8.

Paragraph 11

As a consequential amendment, paragraph 11 is now renumbered as paragraph 10.

B. The following amends the corresponding provisions of the First Protocol to the Agreement:

ARTICLE I
BORDER AREAS

For the purpose of this Second Protocol:

1. The Philippine border areas for the purpose of this Agreement comprise Tawi-Tawi, Sulu, Southern Palawan and any other areas to be designated.

2. The Malaysian border areas for the purpose of this Agreement comprise the Federal Territory of Labuan and the administrative districts of Kudat, Sandakan, Lahad Datu, Semporna, Tawau and any other areas to be designated.

3. Each country shall establish border-crossing stations in its border areas as the sole entry and exit points. The Philippine-designated border-crossing stations are Balabac, Mapun, Taganak, Sitangkay and Bongao. The Malaysian-designated entry points are Labuan, Kudat, Sandakan, Lahad Datu, Semporna and Tawau. The establishment by one country of such entry points/border-crossing stations and any subsequent change of location thereof shall be conveyed to the other country.

4. The Philippine border-crossing stations will admit holders of border-crossing passes and other internationally recognized travel documents.

ARTICLE II
PERSONS ENTITLED TO BORDER-CROSSING PASSES

1. The two countries shall issue border-crossing passes to their respective nationals for the purpose of entry into, sojourn in, or exit from the other's border areas. The pass may be issued to nationals who are residents of their respective border areas. Passes may be issued for purposes of business, social visits and official duties.

2. Subject to the existing customs and quarantine laws and regulations of the two countries, border-crossing pass holders shall be allowed to bring in personal effects, such as clothing, medicine and foodstuff and shall also be allowed to bring in goods for trade.

3. Border-crossing pass holders of each country shall be subject to the laws and regulations of the other country while in the latter1 s border areas.

ARTICLE III
BORDER-CROSSING PASS

1. Border-crossing passes shall be issued in the respective national languages and in English. The pass shall contain the following particulars pertaining to the holder:

(a) Name

(b) Sex

(c) Identity card number or its equivalent


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(d) Date and place of birth

(e) Address

(f) Occupation

(g) Nationality

(h) Photograph

(i) Signature and/or right thumb print

(j) Marital Status

(k) Height

(l) Colour of eyes

(m) Colour of hair

(n) Visible distinguishing marks

2. Children below 12 years of age accompanying a parent or guardian may be included in the border-crossing pass issued to the parent or guardian. The pass shall contain the photograph of such child or children and the following particulars relating to such child or children:-

(a) Name

(b) Sex

(c) Date of Birth

ARTICLE IV
VALIDITY OF BORDER-CROSSING PASSES

1. A border-crossing pass shall be valid for a period of one year from the date of issue and may be used for multiple entries for a stay not exceeding 30 days from the date of each entry.

ARTICLE V
RIGHT TO REFUSE ENTRY

1. Either country reserves the right to refuse entry to any holder of a border-crossing pass issued by the other country if there are reasons to believe that:

(a) the border-crossing pass was issued in violation of existing laws and regulations, or

(b) the person possessing the border-crossing pass is an undesirable or excludable person according to the laws and regulations of such country.

2. Where the holder of the border-crossing pass has been refused entry in accordance with existing laws and regulations, the immigration authorities to whom such pass has been presented shall endorse/stamp the pass to the effect that entry has been refused.

3. The country whose nationals have been refused entry shall immediately readmit the persons concerned.

ARTICLE VI
BORDER-CROSSING PASS
ISSUING AUTHORITY


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1. The authority for the issuance of border-crossing passes for Filipino nationals shall be the Commissioner of Immigration of the Philippines or any other official authorized by him for such purpose;

2. The authority for the issuance of the border-crossing passes form Malaysian nationals snail be the Director-General of Immigration of Malaysia or any other official authorized by him for such purpose.

ARTICLE VII
BORDER-CROSSING VESSELS

1. Other than the Seaman's Identification Card, Seaman's Book, Ship Identification Record Book, other internationally recognized travel documents or Border-Crossing Pass, each country may issue a border crew card to each crew member of mutually recognized nationally licensed or registered vessels. The border crew card shall be valid for a period of one year from the date of issue and may be used for multiple entries for a stay not exceeding 30 days from the date of each entry. The period of stay may be extended upon request.

2. Only vessels which are nationally licensed or registered in either country are allowed to transport border-crossing pass holders or holders of other internationally recognized travel documents, and goods for trade except in special cases as may be agreed upon by the two countries. The entry and clearance of vessels shall be subject to the respective laws of the two countries.

3. The Philippines and Malaysia shall reciprocally recognize nationally registered/licensed vessels for border-crossing transport services subject to the right of the respective countries to exercise port state control.

4. For the purposes of this Protocol:-

(a) a registered vessel means a vessel granted the right to fly the flag of either the Philippines or Malaysia and which is so entered in the Register of Ships of the country concerned;

(b) a nationally licensed vessel means a vessel permitted to operate within the respective waters of the Philippines and Malaysia and which shall be allowed to operate between the borders of both countries.

4.1 For the Philippines,

(a) a registered shipping vessel means a vessel engaged in overseas trading with a valid Philippine Certificate of Vessel Registry;

(b) a nationally licensed vessel means a vessel operating within Philippine waters carrying a Special Permit to operate in the Malaysian border areas.

4.2 For Malaysia,

(a) a registered vessel means a vessel with a valid Malaysian certificate of registry;

(b) a nationally licensed vessel means a vessel operating within Malaysian waters, carrying an endorsement permitting it to operate in the Philippine border areas.

C. In addition to the above, the following are agreed upon by the States Parties to the Agreement

ARTICLE VIII
BORDER PATROL

1. The enforcement agencies of the Philippines and Malaysia shall conduct coordinated border patrol operations in the maritime border areas of the two countries for the prevention of illegal activities as enumerated and defined below.


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(a) Drug Trafficking means performing the following acts: manufacturing, importing, exporting, keeping, concealing, buying, selling, giving, receiving, storing, administering, transporting, carrying, sending, delivering, procuring, supplying or distributing any dangerous drugs without lawful authority.

(b) Hijacking means any unlawful act of seizing, or exercising control of a seaborne or airborne vessel, or attempting to perform any such acts, by force or threat thereof, or by any other form of intimidation.

(c) Illegal Entry means an act of entering the border areas of either country in contravention of immigration laws and regulations in force in that country.

(d) Piracy means any illegal act of violence, detention or depredation committed by the crew or passengers of a seaborne or airborne vessel and directed against another seaborne or airborne vessel or against persons or property on board such seaborne or airborne vessel or abetting any of the aforementioned acts.

(e) Smuggling means the act of bringing into or taking out of the border area merchandise or articles, including arms and explosives, in contravention of the laws and regulations of either country.

(f) Theft of Marine Resources means the illegal extraction by whatever means of marine resources, living or non-living, above or under the seabed, which is prohibited under the laws of the respective countries.

(g) Marine Pollution means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.

2. All border patrols shall be carried out in accordance with the laws and regulations of the respective countries and in conformity with International Law.

3. For the purpose of enhancing efficiency in the execution of coordinated border patrols and other activities pertaining to the safety and security of the border areas, the Joint Committee on Border Cooperation (JCBC) shall establish, as a coordinating body, the Philippines-Malaysia Border Patrol Coordinating Group (BPCG) which shall have the following functions:

(a) Implement/execute directives issued by the JCBC on matters pertaining to border patrols;

(b) Formulate and regularly update the Standard Operating Procedures (SOP) on border patrols;

(c) Plan, execute and control coordinated border patrols;

(d) Establish and coordinate communication links, requirements and procedures of border patrols.

4. The BPCG of each country shall consist of a Chairman, a maximum often (10) members and a Secretariat comprising two (2) members.

5. To ensure the safety and security in the border areas, the coordinated border patrols shall be conducted in accordance with jointly agreed concepts and procedures.

6. The BPCG shall hold its coordinating meetings at least once a year, not later than two months prior to the JCBC meeting, to be hosted alternately by the Philippines and Malaysia. However, either party may request for special meetings as and when the need arises.

7. The BPCG shall formulate procedures on communications to ensure the smooth conduct of the coordinated border patrols. Communications equipment shall be provided as agreed upon by the two parties.

8. Each party shall be responsible for the administration of its own agencies and the provision of logistical


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support.

9. Both parties shall exchange information and intelligence with respect to illegal acts as enumerated and defined herein.

10. Should any differences arise on the execution of matters referred to in the foregoing, the problem shall be referred to the Joint Committee on Border Cooperation for resolution.

ARTICLE IX
NATIONAL LAWS AND REGULATIONS

1. Matters or issues not covered by the foregoing provisions shall be subject to the respective national laws and regulations of the two countries.

ARTICLE X
RESPONSIBLE BODY

1. The Joint Committee on Border Cooperation is responsible to the Philippines-Malaysia Joint Commission for Bilateral Cooperation.

ARTICLE XI
ENTRY INTO FORCE

1. This Second Protocol shall enter into force on the day Notes are exchanged confirming and recording the agreement of the Parties.

2. The Government of the Republic of the Philippines and the Government of Malaysia may at any time agree to revise or amend this Protocol, and the amendments so agreed shall be recorded in Notes exchanged between them or in any manner the Parties may deem appropriate.

3. IN WITNESS WHEREOF, the duly authorized representatives of the Government of the Republic of the Philippines and the Government of Malaysia have signed the present Protocol.

Done at KUALA LUMPUR this 29th. March, 1995

For the Government of
Republic of the Philippines

For the Government of
Malaysia

(Sgd.)

(Sgd.)


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