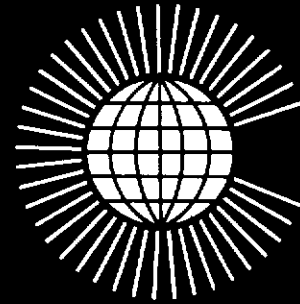


Commonwealth Legal Assistance News



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CONFERENCES AND MEETINGS

The **Fifth Meeting of Law Officers of Small Commonwealth Jurisdictions** was held in Windhoek, Namibia from 4 to 8 September 1995. Law Officers considered a number of issues relevant to international co-operation to combat crime. Among the subjects considered were the role of regulators of financial services, the modernisation and simplification of extradition arrangements and the resource implications of mutual assistance in criminal matters. The concluding statement issued after the meeting notes strong endorsement of the view that proper regulation is essential to the maintenance of confidence in a country's financial services and records the law officers' recommendation that the issue of developing national expertise in financial supervision be considered by Law Ministers.

Small jurisdictions recognised the difficulties they faced dealing with extradition requests and determined that efforts should be made to simplify procedures where possible. The meeting called upon Law Ministers to consider adding to the London Scheme for the Rendition of Fugitive Offenders provisions recognising the validity of

bilateral or regional agreements to surrender on the basis of a "backed warrant". The impact on law offices of small jurisdictions, particularly offshore financial centres, of responding to requests for mutual assistance in criminal matters is of significant concern to law officers. In attempting to identify ways in which small jurisdictions could continue to assist in the global fight against crime, law officers asked that Law Ministers be invited to consider the development of guidelines on the apportionment of costs in mutual assistance cases, specifically where the traffic in requests is one way traffic.

PUBLICATIONS

A Grotius Publication (for Cambridge University Press) entitled **Mutual Assistance in Criminal and Business Regulatory Matters** was published in May 1995. Edited by the former Head of the Commonwealth Secretariat's Commercial Crime Unit, Dr Bill Gilmore, the publication brings together all the major multilateral instruments relating to these subjects. In so doing it provides an excellent reference document which will be of real use to countries wishing to acquaint themselves with global developments. A number of bilateral instruments are also included in the collection as are the model bilateral treaties of some Commonwealth countries. The introduction to the collection provides a well-researched history of the development of these two areas of international co-operation and explains recent multilateral and bilateral treaty and agreement practice.

The **Report of the UN Commission on Crime Prevention and Criminal Justice on its Fourth Session (30 May-9 June 1995) to the Economic and Social Council ("ECOSOC")**(document E/CN.15/1995/13) reproduces a number of draft resolutions and decisions which the Commission has recommended for adoption, as follows.

A draft resolution to be recommended for adoption by the General Assembly would endorse the resolutions adopted by the Ninth UN Congress on the Prevention of Crime and the Treatment of Offenders and encourage particular attention to operational follow-up activity.

Among the draft resolutions recommended for adoption by ECOSOC are resolutions on:

- (i) the convening of an expert group to consider ways of improving extradition and related mechanisms of international co-operation in criminal matters;
- (ii) criminal justice action to combat the organised smuggling of illegal migrants across national boundaries, including a clause urging States to share information and to co-ordinate law enforcement activities between national authorities in co-operation with those involved in international transport;
- (iii) implementation of the Naples Political Declaration and Global Action Plan against Organised Transnational Crime, including proposals to create a central repository of existing legislation and information on organisations which combat organised transnational crime, to develop legislative models to assist developing countries and countries in transition, and to reinforce common regulatory and enforcement strategies to combat money-laundering in co-operation with other international and regional organisations; and
- (iv) action against corruption, including a clause urging States to improve international co-operation for the prevention and control of corruption in the areas of extradition, mutual legal assistance, information sharing and collection of evidence, and appending a Draft International Code of Conduct for Public Office Holders.

In **Jones on Extradition** (London, Sweet & Maxwell 1995 pp xlili, 474), Alun Jones QC sets out to produce, in his own words, "a guide to the law and practice of extradition to and from the United Kingdom". Newcomers to the subject are likely to find that the result provides a clearly written and logically structured overview of a complex area which, as Jones notes himself, has tended to be neglected by text book writers. Students and practitioners alike will note with particular interest the discussion of the meaning of "jurisdiction" and of the political offence exception (both of which attract a chapter of their own); of the treatment under Part III of the Extradition Act 1989 (UK) of foreign states, of Commonwealth states and colonies, of the powers and duties of the Secretary of State, and of discharge in case of delay; and of the protections of section 11(3) of the Extradition Act 1989 (UK) (power of court to order applicant's discharge).

INTERNATIONAL AGREEMENTS

Canada/United States Agreement on Sharing of Forfeited Assets and Equivalent Funds

The governments of Canada and the United States have agreed that when one Party, the Assisting Party, has participated in investigations or proceedings which result in a forfeiture

or the payment of funds equivalent to a forfeiture in the jurisdiction of the Assisted Party, then the Assisted Party may share with the Assisting Party the net proceeds realised. The amount shall be determined in accordance with the law of the Assisted Party.

CASE NOTES

Extradition - whether Secretary of State's order to proceed flawed

The fugitive's ex-husband and his girlfriend had been shot in France in 1991. She was arrested in July 1992 six months after coming to the United Kingdom, on suspicion of the French police that she had been implicated. She sought a writ of habeas corpus on the basis that the Secretary of State's issue of an authority to proceed was flawed, and that the magistrate was thus powerless to commit her.

Held, granting the application:

1. The Extradition Act 1989 applies to France by virtue of the European Convention on Extradition Order 1990
2. The Secretary of State had issued the order to proceed on the wrong basis. There was no evidence to implicate D in the crime; she was merely someone who could have been questioned about it.

Re Dokleja; R v. Bow Street Stipendiary Magistrate, ex p. Dokleja [1994] C.O.D. 207, D.C.

Extradition - whether oppressive to extradite to Canada more than six years after offences committed

Two brothers were arrested in the United Kingdom in 1993 pursuant to a request that they be extradited to face fraud charges relating to an offence allegedly committed in Canada in 1986/87. In extradition proceedings they sought a writ of habeas corpus, arguing that it would be oppressive and unjust to return them after this lapse of time.

Held, the application was dismissed because there was no evidence to show that the mere passing of time would cause any injustice.

Re Chetta and Chetta [1994] C.O.D. 306, D.C.

Mutual Assistance in Criminal Matters: Letter of Request for assistance issued by AG - whether AG obtained evidence improperly

The Attorney-General of Gibraltar sent a letter of request to the Federal Office for Police Matters in Switzerland seeking information relating to a fraud investigation by the Royal Gibraltar Police. He did this without applying to any Court or other judicial authority in Gibraltar, and no-one had been arrested, charged or brought before a Court in connection with the allegations set out in the letter. An investigating judge in Switzerland duly summoned the second plaintiff and obtained answers to the questions contained in the letter. A second letter of request was issued shortly afterwards. In response to an inquiry by the Swiss authorities, the defendant gave his assurance that he had followed the correct procedure in issuing the letter and that the Swiss authorities would receive the same help in Gibraltar.

The plaintiffs alleged under a number of heads that the defendant lacked the authority to issue the Letter of Request.

Held, granting the application and following a detailed examination of the Evidence (Proceedings in Other Jurisdictions) Act 1975, and the European Convention on Mutual Assistance in Criminal Matters 1959:

1. Pursuant to its inherent jurisdiction the Supreme Court of Gibraltar has the authority to issue a Letter of Request to a foreign court or tribunal;
2. There is no statute in force in Gibraltar which gives the AG the power to issue a Letter of Request;
3. Swiss law requires reciprocity before a Swiss court can comply with a formal Letter of Request. The assurances given by the AG in this matter were misleading because under the Evidence Ordinance, the Supreme Court could only assist the Swiss authorities if criminal proceedings had been instituted in Switzerland (and none had been commenced in Gibraltar in the present case). Further, the Letter lacked particularity and the Supreme Court should in parallel circumstances refuse to process the request.
4. The defendant is in no position to give binding assurances (here relating to reciprocity). Only the Governor can give an assurance that binds the Crown.
5. The defendant may issue a request to a foreign court but not a "Letter of Request" within the meaning given to that phrase by international law. In this case he misled the foreign court on several matters and therefore obtained improperly the evidence supplied.

Arche Treuhand AG & Vollenweider v. Her Majesty's Attorney-General for Gibraltar, Supreme Court of Gibraltar, unreported, 1 March 1995

Mareva injunction - extraterritorial jurisdiction under Hong Kong Supreme Court Rules

(We report this case because Mareva injunctions are sometimes used to ensure that assets are restrained pending criminal actions, particularly where there are no mutual assistance arrangements in place).

Mercedes Benz AG had commenced proceedings against the defendant in Monaco, where he was in custody. The Monaco court had ruled that it had no jurisdiction to attach those assets of the defendant situated in Hong Kong. Mercedes therefore sought an order from the Hong Kong court of first instance to attach ex parte the defendant's assets by way of Mareva injunction following the procedure set down in Order 11, rule 1 of the Hong Kong Rules of the Supreme Court. This rule provides that a writ might be served out of the jurisdiction with the leave of the court where

"...(b) an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction...(m) the claim is brought to enforce any judgement..."

Mercedes appealed the Hong Kong Court of Appeal's refusal to permit the service of a writ in respect of the application for a Mareva injunction.

Held, dismissing the appeal:

1. Order 11 rule 1 does not entitle the court to permit the service of a writ claiming Mareva relief on a foreigner outside of the jurisdiction under (b) because Order 11 is confined to originating documents which set in motion proceedings designed to ascertain substantive rights; it does not assert an extraterritorial jurisdiction grounded merely on the presence of assets within the territory. The Mareva claim in the present proceedings, when ruled upon, would decide no rights and call into existence no process by which the rights would be decided.
2. Nor does Order 11 rule 1 entitle the court to permit the service of a writ claiming Mareva relief on a foreigner outside of the jurisdiction under (m). First, the claim is not "brought to enforce" a judgment because a Mareva injunction does not enforce anything. Second, the injunction did not enforce a "judgement" but was intended to hold the position until the judgment came into existence.

Mercedes Benz AG v. Leiduck Privy Council, *Times Law Report*, 11 August 1995

Extradition Act Cap. 189 section 20 (Barbados) - correct procedure for appeal and time limit

The appellant filed Notices of Appeal and Grounds for Appeal against the decision of a magistrate to commit him for surrender following an extradition request from the USA.

Held, striking out the Notices, that anyone who is committed to prison under the Extradition Act and wishes to appeal must under section 20 apply for leave to appeal on a question of law within 15 days of his committal. Following *Robert Harding Walker v. The Government of the United States of America* High Court of Barbados, unrep. December 7, 14 (1990/115), the Act does not empower the court to extend the time limit nor to treat the Notices filed as an application for leave to appeal.

Paul Webster v. The Government of the United States of America Court of Appeal of Barbados, unrep. June 8 1995 (1995/44)

Extra Citation

R v Governor of Belmarsh Prison, ex parte Martin *The Times*, 12 April 1995, noted in 7 CLAN 5 (April 1995), is also reported at [1995] 3 All ER 634.

LEGISLATION

The Commercial Crime Unit is establishing a data base to enable the ready retrieval of its holdings of national laws. The following lists reflect our current holdings of laws on extradition and mutual assistance in criminal matters. Copies of these are available on request.

MUTUAL ASSISTANCE IN CRIMINAL MATTERS

Country	Name & Date of Act
Antigua & Barbuda	Mutual Assistance in Criminal Matters Act 1993
Australia	Foreign Evidence Act 1994
Australia	Mutual Assistance in Criminal Matters Act 1987
Botswana	Mutual Assistance in Criminal Matters Act 1990
British Virgin Islands	Criminal Justice (International Co-operation) Act 1993
British Virgin Islands	Mutual Legal Assistance (USA) Act 1990
Cyprus	Foreign Tribunal Evidence Law 1908
Dominica	Evidence (Proceedings in other jurisdictions) Act 1987
Dominica	Mutual Assistance in Criminal Matters Act 1990
Jamaica	Mutual Assistance (Criminal Matters) Act 1995
Malawi	Mutual Assistance in Criminal Matters Act 1991
New Zealand	Mutual Assistance in Criminal Matters Act 1992
Nigeria	Mutual Assistance in Criminal Matters Act 1988
Seychelles	Mutual Assistance in Criminal Matters Bill 1995
South Africa	Foreign Courts Evidence Act No. 80 of 1962
St. Vincent and the Grenadines	Mutual Assistance in Criminal Matters Act 1993
Switzerland	Federal Act on International Mutual Assistance in Criminal Matters 1981 & 1982
Tanzania	Mutual Assistance in Criminal Matters Act 1991
Thailand	Mutual Assistance in Criminal Matters Act 1992
UK	Criminal Justice (International Co-operation) Act 1990
Vanuatu	Mutual Assistance in Criminal Matters Act No. 52 1989
Zambia	Mutual Legal Assistance in Criminal Matters Act 1993
Zimbabwe	Criminal Matters (Mutual Assistance) Act 1990

EXTRADITION

Country	Name & Date of Act
Australia	Extradition (Foreign States) Act 1966-1974 (repealed)
Australia	Extradition Act 1988
Bahamas	Extradition Act 1994
Barbados	Extradition Act 1980
Bermuda	The Fugitive Offenders (Bermuda) Order 1967
Bermuda	Fugitive Offenders (UK Dependencies) Order 1969
Bermuda	Fugitive Offenders (Designated Commonwealth Countries) Order 1987
Bermuda	Extradition Act 1877
Botswana	Extradition Act 1968 (Repealed)
Botswana	Extradition Act 1990
Canada	Fugitive Offenders Act 1978
Cook Islands	Extradition Act 1915
Cook Islands	Fugitive Offenders Act 1969
Cyprus	Extradition of Fugitive Offenders Law 1970
Fiji	Extradition Act 1977
Isle of Man	Extradition (Designated Commonwealth Countries) Order 1991
Jamaica	Extradition Act 1991
Kiribati	Extradition Act 1981
Malaysia	Extradition Act 1992
Malta	Extradition Act 1982
Micronesia	Fugitive Offenders (Amendment) Bill 1987
Nauru	Extradition of Fugitive Offenders Act 1973
New Zealand	Fugitive Offenders Act 1881 (Imp.) as amended and enforced in New Zealand
Nigeria	Extradition (Amendment) Decree 1988
Niue	Extradition Act 1966
Papua New Guinea	Extradition Act 1975
Papua New Guinea	Extradition (Commonwealth Countries) (Amendment) Regulation No. 9 of 1984

EXTRADITION

Country	Name & Date of Act
Papua New Guinea	Extradition (Amendment) Act No. 17 of 1984
Singapore	Extradition Act 1968
Solomon Islands	Extradition Act 1987
South Africa	Extradition Act No. 67 of 1962
St. Vincent and the Grenadines	Fugitive Offenders Act 1989
Tanzania	Extradition Act 1965
The Gambia	Extradition Act, 1986
Tonga	Extradition Act 1972
Tonga	Extradition Amendment Act 1993
Trinidad and Tobago	Extradition (Commonwealth and Foreign Territories) Act 1985
Tuvalu	Fugitive Offenders Act 1967
Tuvalu	Fugitive Offenders (Tuvalu) Order 1975
UK	Extradition Act 1989
Vanuatu	Extradition Act No. 4 of 1988
Western Samoa	Extradition Amendment Act 1994
Western Samoa	Extradition Act 1974
Zambia	Extradition Act 1968-1970
Zimbabwe	Extradition (Designated Countries) Order 1990
Zimbabwe	Extradition Amendment (No. 2) Act 1990
Zimbabwe	Extradition Amendment Act 1990
Zimbabwe	Extradition Act 1982

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