EXTRADITION IN SINGAPORE AND MALAYSIA

Current procedures for the surrender of fugitives to and from Singapore and Malaysia are discussed in some detail, with particular emphasis upon the nature of the evidence required from requesting states, the various restrictions upon the surrender of fugitives and the methods by which the legislation is applied to particular states. The underlying theme is the appropriate balance of functions between the judiciary and the executive in extradition proceedings. Some procedural reforms are also suggested.

I. INTRODUCTION

EXTRADITION is a formal process for the surrender of fugitives, convicted or accused, from the state where a fugitive is found to the state of trial. Three characteristics of this process should be emphasised: formality, surrender, and the identity of purpose and function. Together, these three characteristics distinguish extradition from all other forms of international co-operation in dealing with fugitive offenders.

Formality distinguishes extradition from the *ad hoc* arrest of suspected fugitives by the police of one state, followed by an unceremonious delivery into the waiting handcuffs of the police of another state — criminal abduction behind the shield of a uniform. Extradition imposes controls upon the circumstances of arrest, requires the production of various official documents and evidence, may be refused if specific requirements are not met and ensures certain safeguards for a fugitive who is finally returned.

Surrender distinguishes extradition from other legal forms of international co-operation such as judicial assistance in the taking of depositions or the securing of other evidence, or the assumption of jurisdiction by the state of refuge over fugitives charged with certain offences who may be found there.

Identity of purpose and function should distinguish extradition from immigration controls such as deportation. Deportation is designed to remove unwanted aliens from the deporting state's territory. Normally, a deporting nation has little interest in the destination of a deportee beyond ensuring that the state to which the deportee is being sent is willing or bound to receive him. However, there are exceptions. A deporting state which is bound by the Convention Relating to Refugees 1951 [1] or the New York Protocol[2] may not expel a political refugee to any country where the life or freedom of the refugee would be jeopardized by reason of their race, religion, membership of a particular social group or political opinions. The rights of European states to deport aliens may be further restricted by Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms,

[1] Geneva, July 28, 1951, 189 United Nations Treaty Series (U.N.T.S.) 137.
[2] January 31, 1967. 606 U.N.T.S. 267.

Securing Certain Rights and Freedoms other Than Those Already included in the Convention and in the First Protocol Thereto.[3] Article 3 has been interpreted as prohibiting expulsion where as a consequence the basic human rights of the deportee, guaranteed by that Article, might be grossly violated or entirely suppressed.[4] More generally, deportation to a requesting state may be used for the primary purpose of surrendering a fugitive, either because extradition is not legally available or because the deportation procedure is simply more expeditious. The use of deportation in this way is called disguised extradition. A person who is or is about to be the subject of disguised extradition may be able to challenge the legality of the deportation order within the deporting state,[5] question the jurisdiction of the trial or executive authorities in the receiving state,[6] or challenge the whole procedure in an international forum such as the European Court of Human Rights.[7]

Extradition is the tailor-made answer to the criminal justice problem of the fugitive criminal. It represents a carefully worked out balance between the interests of states and the interests of individuals, which balance is essential in all aspects of criminal justice. No other process for international co-operation with respect to fugitive criminals is as effective or as fair to all parties concerned.

The purpose of this essay is to explore the extradition processes evolved by Singapore and Malaysia and to compare those processes with their English predecessors and some Commonwealth contemporaries in an attempt to discover which aspects of the processes are historically derived, which are home grown and which are inherent in the concept of extradition itself. The second part deals with the history of extradition in the region. Continuity with the past, not for its own sake but for the functional benefits it offers in extradition practice, has been important in Singapore and Malaysia. Compatibility with contemporary processes is equally desirable in any system of co-operation and the remainder of the article is concerned with current practices and trends.

How best to ensure international co-operation in the pursuit and surrender of fugitive criminals is a problem not unlike that of the

[3] European Treaty Series (E.T.S.) No. 46.

[4] Van den Wijngaert, *The Political Offence Exception to Extradition* (Kluwer, The Netherlands 1980) 90-92. Hereinafter cited as Van den Wijngaert.

[5] *R.* v. *Secretary of State for Home Affairs ex p. Duke of Chateau Thierry* [1917] 1 K.B. 922. Compare *R.* v. *Governor of Brixton Prison ex p- Soblen* [1963] 2 Q.B. 243 and O'Higgins, "Disguised extradition: the Soblen case" (1964) 27 Mod. L. Rev. 521-39; Shearer, *Extradition in International Law* (University Press, Manchester 1971) 79-86; Thornberry, "Dr. Soblen and the alien law of the United Kingdom" (1963) 12 Int. Comp. L.Q. 414. Recent changes in United Kingdom immigration procedures have increased opportunities for administrative review. See Immigration Act 1971, especially Part II and the Immigration Rules made by the Home Secretary under the Act.

[6] See, for example, *R.* v. *Hartley* [1978] 2 N.Z.L.R. 199; *R.* v. *Bow Street Magistrates, ex p. Mackeson* (1982) 75 Cr. App. R. 24; *R.* v. *Guilford Magistrate's Court, ex p. Healy* [1983] 1 W.L.R. 108. These cases consider the issue in terms of a possible abuse of the domestic court's process. Shearer, *ibid.*, 83 suggests that a French court would deny jurisdiction to try a person who had been returned to France by way of disguised extradition.

[7] The European Human Rights Commission at Strasbourg has accepted jurisdiction in at least two cases where the applicants claimed their expulsion violated the European Convention for the Protection of Human Rights and Fundamental Freedoms. (1950 E.T.S. No. 5) in that it exposed them to the possibility of inhuman punishment, namely execution. See Application No. 2396/65, Fed. Rep. of Germany, not published but mentioned in Van den Wijngaert, at p. 91 and Application No. 5961/71, United Kingdom (Amekrane), Rec. 44, 101-144.

enforcement of bargains or promises. In each case, the person posing the problem must consider a number of important issues, central to the notions of criminal justice or of business and commerce. In each case the architect of the scheme will have to reconcile the potentially competing interests of several parties. In solving these problems different legal systems may adopt different packages but the core ideas or issues behind the packaging must remain the same. The following is an outline of the basic issues a designer of an extradition package would need to consider. Together they will provide the reader with a guide to the local system and should assist the reader to distinguish between what is merely part of packaging and what are core ideas.

(a) By what right or authority may the officials of one state arrest, detain and deliver the fugitives of another state?

(b) To which states should surrender of fugitives be granted? Should a minimal standard of criminal justice in those states be required?

(c) How can a surrendering state ensure that the receiving state will return the favour should the occasion arise? This is the problem of reciprocity.

(d) For what offences should extradition be available? Should the act or omission which is a crime in the requesting state also be a crime, of whatever name, in the requested state? This is the problem of double criminality.

(e) When is a "terrorist" a "revolutionary"? When is a demonstration an unlawful assembly and when a legitimate, though perhaps unlawful, exercise of civil rights? This is the tension between criminal justice and democratic opposition, between extradition and political asylum.

(f) If a fugitive is surrendered, how can the requested state ensure she or he will not be tried or punished for acts or omissions other than those for which surrender was granted? When might trial for other offences be desirable? This is the issue of speciality.

(g) What should the requesting state be required to produce? What should the fugitive be permitted to prove? This is the tension between a *prima facie* case and a dress-rehearsal trial, between speed and minimal cost and minimising the risk of a mistaken surrender of an innocent or oppressed individual.

(h) Finally there is perhaps the most important issue of all — not what is to be decided, but which institution should have the responsibility of deciding? For the first three issues, the realistic choice is between the legislature and the executive. For the remainder, either the executive or the judiciary could decide. If the interests of the individual are to be paramount, the judiciary would be the best custodians. If the interests of states are to prevail, the executive seems the better choice. If a balance of the two is sought, there may be legitimate roles for both. Certainly if one institution is permitted to dominate to the exclusion of the others, one or other party's interest in extradition will suffer.

Bearing these fundamental issues in mind, let us turn to the first source of modern Singapore and Malaysian practice, the historical origins of their extradition procedures.

II. HISTORY

Any attempt to trace the development of extradition arrangements in this region requires a minimal understanding of local constitutional history. Such minimal understanding has been assumed for the purposes of the following discussion.

Extradition in countries connected with the British Empire was traditionally divided into three parts: extradition to and from non-Empire, now non-Commonwealth, states;[8] intra-Empire, now intra-Commonwealth, extradition; and extradition between continguous Empire, now Commonwealth, jurisdictions. These three divisions are evident in current extradition procedures in Singapore and Malaysia. How they developed is briefly traced below.

A. *Foreign States*

The present arrangements with foreign states date from the passage of the Imperial Extradition Act 1870.[9] Section 17 of that Act permitted its provisions to be extended by Order in Council to any British possession. The Act was applied to the Straits Settlements in 1877.[10] The extradition framework provided by the Act contemplated a network of bilateral treaties between Great Britain and other states, each one of which would be given effect under the Act by means of an Order in Council applying the Act to the other state. Most post-1870 British extradition treaties applied to all British possessions, which included the Straits Settlements. This system remained the basis of extradition between Singapore and foreign states until 1968.

The Malay states were not British possessions and their relations with foreign states were unaffected until 1912 when, with a view to the application of future British extradition treaties to them, the states began to enact their own extradition legislation.[11] These were either verbatim copies or close modifications of the British Act as amended. At the same time Britain began to include clauses in her extradition treaties which extended the benefit thereof to the Malay states. This arrangement continued until the current Extradition Ordinance 1958 was passed in 1958.[12]

B. *Commonwealth Extradition*

The Imperial Fugitive Offenders Act 1881[13] provided a simplified procedure for the surrender of fugitives within the Empire The Act

[8] Henceforth referred to as foreign states.

[9] 33 and 34 Vict. c. 52.

[10] Straits Settlements (Extradition) Order 1877: see de Mello, *A Manual of the Law of Extradition and Fugitive Offenders applicable to the Eastern Dependencies of the British Empire,* 2nd ed., 1933 (hereinafter cited as de Mello), 135. The Order gave effect to Ordinance No. 23 (Extradition) passed by the Straits Settlements Legislative Council in the same year: de Mello, 134.

[11] de Mello, 10. These Acts were subsequently amended. See the Extradition Act 1914, Act No. 26 of 1914 (F.M.S.); Extradition Enactment 1915, No. 14 of 1915 (Johore); Extradition Enactment 1334 No. 36 of 1334 (Kedah); Extradition Enactment 1916, No. 2 1916 (Kelantan); Extradition Enactment 1334, No. 10 of 1334 (Perlis); Extradition Enactment 1352, No. 4 of 1352 (Trengganu); Extradition Ordinance 1951, No. 12 of 1951 (British North Borneo); Extradition Ordinance 1947, No. 15 of 1947 (Sarawak).

[12] Ss. 3 and 23.

[13] 44 & 45 Vict. c. 69.

automatically applied to all British Colonies, including the Straits Settlements. The Malay states were not immediately affected.

C. *Contiguous Jurisdictions*

The Fugitive Offenders Act 1881 was divided into four Parts. Parts I, III, and IV applied to all British possessions. Part II provided a reciprocal backing of warrants procedure for the surrender of criminals which could only be applied by Imperial Order in Council to such groups of neighbouring territories as were named in the Order. Before 1915 the Straits Settlements were members of two such groups.[14] Similar arrangements with the Malay states seemed highly desirable. Previously, extradition between the Straits Settlements and their closest neighbours had been dealt with first, under a foreign states procedure,[15] then, with respect to the Federated Malay States, under a procedure modelled upon Part I of the Fugitive Offenders Act 1881.[16]

In 1915, the Imperial Parliament passed the Fugitive Offenders (Protected States) Act 1915 [17] to enable the Fugitive Offenders Act 1881 to be extended to protected states as if such states were British possessions. With the consent of the rulers, by a series of Orders in Council[18] ending with the Order in Council under the Fugitive Offenders Act 1881 dated 2 January 1918,[19] Part II of the 1881 Act was applied to a group of territories comprising British India, Ceylon, Hong Kong, the Straits Settlements, the Federated Malay States, Johore, Kedah. Perlis, Kelantan, Trengganu, North Borneo, Brunei and Sarawak. Each territory enacted the necessary empowering legislation, again amended by some states from time to time.[20] The Order in Council of 1918 remained in force in Malaysia until 1967, in Singapore until 1968. Current extradition between Singapore and Malaysia is modelled upon its provisions.

Post-independence application of British statutes and treaties has not been without difficulty, but it is not possible to deal with all these problems here.[21] However, some mention should be made of treaty succession. The complexities of Singapore's constitutional history, together with a marked reluctance on the part of anyone to deal systematically with the problem, has left the current status of many of the

[14] Order in Council, 12 December 1885 S.R. & O. Rev. 1904, v. "Fugitive Criminal", p. 326 (H.M. East Indian Territories, Ceylon, and the Straits Settlements). Order in Council. 12 December 1885, S.R. & O. Rev. 1904, v. "Fugitive Criminal" p. 327 (Straits Settlements, Hong Kong and Labuan).

[15] See Straits Settlements Extradition Order 1889, as amended by Straits Settlements Extradition Order 1901 and Straits Settlements Extradition Order 1908, S.R. & O.R. Rev. 1904, v. "Straits Settlements", p. 12.

[16] The Straits Settlements Fugitive Offenders Order 1904. See de Mello, pp. 130-1, n.2.

[17] 5 & 6 Geo. c. 39; de Mello, p. 127.

[18] The Straits Settlements and Protected States Fugitive Offenders Order in Council 1916, de Mello p. 128; the Straits Settlements and Protected States Fugitive Offenders Order 1917, de Mello, 129, n. 29.

[19] de Mello, p. 131.

[20] See Commonwealth Fugitive Criminals Act, No. 54 of 1967, Schedule III.

[21] See *P.P.* v. *Anthony Wee Boon Chye & Anor.* [1965] 1 M.L.J. 189, as to the continued application of the Fugitive Offenders Act 1881, Part II, to Singapore in 1963. See *In re Sech Bin Omar Bin Ahdad al Katiri* (1877) 2 Ky. Hab. Corp. Cas. 3; *In re Charles Rykschroeff* (1879) 2 Ky. Hab. Corp. Cas. 10; *In re Westerling* [1951] 17 M.L.J. 38; (1950) Int. L.R. 82; (1950) 1 M.L.R. 228, as to extradition between Singapore and Indonesia and the relevant Anglo-Dutch treaties.

British treaties with respect to Singapore in considerable doubt.[22] At least two treaties have been confirmed by means of an exchange of notes.[23] The Singapore Government apparently acknowledges obligations under several others but upon what basis the author was unable to establish. The position with respect to Malaysia is more certain. Normally bilateral treaties do not apply to a party's protected states. However, after 1918 several British treaties were specifically extended to the various Malay states. These continued in force by virtue of a devolution agreement.[24] Malaysia has subsequently entered into at least two other extradition treaties.[25]

III. FOREIGN STATE EXTRADITION

The extradition laws of Singapore and Malaysia can now be found in three principal acts: the Extradition Act 1968 (Singapore), and the Extradition Ordinance 1958 and the Commonwealth Fugitive Criminals Act 1967 of Malaysia. Broadly the position maintained is as follows. Extradition to and from foreign states remains essentially treaty-based, and a desire to retain the benefits of the United Kingdom treaties means that there has been little room for innovation or deviation from the 1870 procedure.[26] Intra-Commonwealth extradition procedure, has been largely determined by the Commonwealth Fugitive Offenders Scheme 1966 ("the Scheme"); however, there is room to manoeuvre within the Scheme and both countries have shown a willingness to depart from the British model. Extradition between Malaysia and Singapore loosely follows the Part II procedure of the Scheme; one would expect reciprocity to be a strong disincentive to change in this area but it does not appear to have inhibited the legislators of either country to a marked degree.

The factors which have encouraged continuity with the past and uniformity in the present in Singapore and Malaysia have been appreciated by many Commonwealth states. This has enabled Singapore in particular to draw upon the drafting expertise of larger neighbours. The Extradition Act 1968 owes a great deal to Australian legislation,[27]

[22] See Jayakumar, "Singapore and State Succession: International Relations and Internal Law" (1970) 19 Int. Comp. L.Q. 398.

[23] *An Exchange of Letters Constituting an Agreement for the continued application to Singapore of the United States — United Kingdom Treaty of December 22, 1931 concerning extradition,* Singapore, 23 April and 10 June 1969; 723 U.N.T.S. 201, (1969). It is believed a similar exchange of letters took place between Singapore and the Federal Republic of Germany in 1960, with reference to the Germany — United Kingdom Treaty of 25 June 1872.

[24] *An Exchange of Letters Constituting an Agreement between the Government of the Federation of Malaya and the Government of the United Kingdom of Great Britain and Northern Ireland concerning succession to rights and obligations arising from international instruments,* Kuala Lumpur, 12 September 1957; 279 U.N.T.S. 288 (1957). There was also an exchange of notes on 15 October 1958 between the United States of America and the Federation of Malaya confirming that each state regarded the United States — United Kingdom Treaty of 22 December, 931 as still in force between their respective countries; 279 U.N.T.S. 290 (1959).

[25] P.U.(A) 286/75 (Indonesia). Extradition (Thailand) Order 1960, L.N. 305/60. And see Commonwealth Fugitives Amendment Act 1984 (Brunei). This Act was passed on 18 July 1984 and at the time of writing was not yet gazetted.

[26] See Extradition Act 1968, No. 14 of 1968, Parts I, II and III; Extradition Ordinance 1958, No. 2 of 1958.

[27] Extradition (Commonwealth Countries) Act 1966-1973 and Extradition (Foreign States) Act 1966-1973. Many provisions are identical.

while Malaysia drew more from British and perhaps Canadian or New Zealand sources. Material from these jurisdictions provides useful insights but the emphasis in the pages below is upon those areas in which Singapore and Malaysia have departed from United Kingdom precedents in particular, but also generally from Commonwealth precedents.

The Extradition Act 1968 is in many ways typical of extradition legislation in modern Commonwealth jurisdictions. It provides a useful anchor for a discussion of procedure. Where the Malaysian provisions are significantly different, this will be explained. Otherwise, the corresponding Malaysian provisions are footnoted.

A. *Application of the Act*

It has already been observed that extradition with foreign states is treaty-based. After a treaty has been concluded, a Minister may, by notification in the Gazette, direct that Part II of the Act will apply to the particular foreign state.[28] The Order should incorporate the terms and limitations of the treaty. Imperial Orders in Council which had been extended to Singapore are continued in force.[29]

Mention should be made of the Hijacking and Protection of Aircraft Act 1978,[30] designed to give effect to the Suppression of Unlawful Seizure of Aircraft Convention 1970[31] and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation 1971.[32] The Act enables the Minister by notification under the Extradition Act 1968 to apply the provisions of that Act to any state which is party to either Convention as if the Convention was a relevant extradition treaty in which offences or attempts to commit offences included in the Hijacking and Protection of Aircraft Act 1978 were the only extradition offences listed in it. These offences were also included in the list of extraditable offences in the Extradition Act itself so that all parties to the Convention, whether they had other extradition treaties with Singapore or not, will be able to obtain surrender of offenders with minimal difficulty.

Section 3 enables Singapore to claim existing extradition arrangements with almost forty states. The range for Malaysia is much more limited. Also, many of the treaties to which Malaysia is a party omit significant offences from the treaty list or have not been amended to include new international offences. The Malaysian Government has attempted what is for a Commonwealth country an extremely novel solution. The Fugitive Criminals (Special Extradition) Act 1977[33] inserted a new section 3A into the Ordinance:[34]

> Where a foreign country in respect of which no Order has been made under subsection (1) of section 3, or in respect of which

[28] Extradition Act 1968, s. 4; Extradition Ordinance 1958, s. 3. (Hereafter sections cited with "S" following refer to the 1968 Act, and sections cited with "M" following refer to 1958 Ordinance).

[29] S. 3 (S); there is no express provision to this effect in the Malaysian Act but the Malaysian Government considers that some treaties which previously applied to the several states continued in force after independence.

[30] No. 9 of 1978.

[31] The Hague, 16 December 1970; T.S. 39 (1972).

[32] Montreal, 23 September 1971; T.S. 10 (1974).

[33] Act A383.

[34] An essentially identical provision was inserted as s. 1A, Commonwealth Fugitive Criminals Act 1967.

> such an Order has been made but is not in force, makes a request for the extradition thereto of a fugitive criminal of that country, the Minister may personally, if he deems it fit to do so, give a special direction in writing that the provisions of this Act be applied in relation to the extradition thereto of that particular fugitive criminal as if there is in force in respect of that foreign country an Order under subsection (1) of section 3.

The section was considered in *Chua Han Mow* v. *Superintendent of Pudu Prison.*[35] Counsel for the applicant argued that section 3A only removed the need for the Yang di-Pertuan Agong to make an Order under section 3: it did not remove the necessity for a valid treaty between Malaysia and the requesting state. Syed Othman F.J. disagreed. In his opinion section 3A was intended to provide for surrender particularly where there was no relevant treaty or other arrangement.[36] It is in light of this conclusion that the learned judge's following words should be considered: "I do not consider it is the function of the court to examine whether there is a valid treaty or any arrangement between Malaysia and the U.S."[37] Read in isolation, this statement is incorrect. The existence of either an arrangement under section 3(1) or a directive under section 3A is essential to the jurisdiction of the committing magistrate.[38] If produced, an Order is conclusive proof of an arrangement and of its own validity.[39] It may not be necessary to produce the Order in every case.[40] It is current English practice to allow the Order in Council to lie on the desk of the Magistrate's Clerk at Bow Street.[41] But the court must satisfy itself as to the existence or terms of an Order if the fugitive challenges either.

The merits of the new provision are clearly evident. The rights of the fugitives are adequately protected, as all the normal safeguards apply, but the time-consuming process of treaty negotiation is no longer necessary. A fugitive cannot justly complain about the retroactive effect of the section, in view of the fact that the acts alleged were crimes when they were committed. The only change is a purely procedural one to facilitate the process of criminal justice.[42] However, the provision does have one disquieting feature — a lack of effective parliamentary control. In this respect, the section is merely a logical extension of a distinctive feature of extradition laws in the region. The Extradition Act 1870 requires every Order in Council made there-

35 [1979] 2 M.L.J. 70.

36 This interpretation was preferred by the Federal Court on appeal. See *Chua Han Mow* v. *Superintendent of Pudu Prison* [1980] 1 M.L.J. 219, 221 and Set *Kon Kim* v. *Officer in Charge, Ceras Police Station* [1984] 1 M.L.J. 73, 74 *per* Mohamed Zaiddin J. The latter case concerned an application from Australia, in this instance treated as a foreign state.

37 *Ibid*., p. 71.

38 *In re Westerling* (1951) 17 M.L.J. 38; *In re Rajah Samudin Tunku Jaksa* (1888) 4 Ky. 346, de Mello, p. 552.

39 S.4(2)(M).

40 *In re Said Mohamed* (No. 2), (1911) de Mello, p. 587; *R.* v. *Governor of Brixton Prison, ex p. Servini* [1914] 1 K.B. 77.

41 This may be an undesirable practice for a ministerial directive which, being made specifically for one application, has no prior life and no permanent abode. In *Set Kon Kim* the directive was produced as Exhibit 1.

42 *Chua Han Mow* v. *Superintendent of Pudu Prison*, *supra*, n. 36; *Gerald Fernandez* v. *Attorney-General, Malaysia,* [1970] 1 M.L.J. 262. See also s. 6(M); Commonwealth Fugitive Criminals (Amendment) Act, 1969; s.6(S).

under, in addition to publication in the Gazette, to be laid before both Houses of Parliament within six weeks of promulgation or Parliament's next sitting, which ever is the sooner.[43] The Act also imposes restrictions upon the content of the Orders. They must be in conformity with the provisions of the Act, particularly those concerning restrictions upon surrender.[44] In contrast, neither the Singaporean nor the Malaysian legislation requires the Orders in Council to be laid before Parliament; although both Acts require that the Orders be published in the Gazette and the Malaysian provisions require the Orders to be in conformity with the Act.[45] Directions under section 3A need not even be published. If at the Minister's discretion a directive is published it will almost certainly be too late to assist the fugitive, even if Parliament is strongly opposed to the surrender. Parliament having passed the enabling statute, extradition has been left strictly to the executive and the courts.[46] This makes it doubly important that the courts remain vigilant in safeguarding a detained person's rights.

B. *Procedure*

Extradition proceedings may be commenced either by formal requisition to the Minister through diplomatic or similar channels or by direct application to a magistrate for the issue of a provisional warrant.[47] Where the Minister receives a requisition, and no provisional warrant has been issued, the Minister may in his discretion inform a magistrate and authorise the magistrate to issue a warrant for the arrest of the fugitive.[48] A magistrate, either on receipt of the Minister's authority or on direct application, may issue a warrant for the arrest of the fugitive provided such evidence as would in the magistrate's opinion, *according to the law in Singapore,* justify (i) arrest of the fugitive by a police officer without warrant or (ii) the issue of a warrant to arrest the fugitive.[49]

The Minister may receive a requisition after a warrant has been issued. Again, the Minister has a discretionary power to notify the magistrate who issued the warrant.[50] The Minister's discretion, in either case, is subject to a number of limitations.

Generally, the Minister may not give a notice if he is of the opinion that the fugitive is for any reason not liable to be surrendered to the

[43] Extradition Act 1870, s. 2. See also Fugitive Offenders Act 1881, s. 31.
[44] Extradition Act 1870, s. 4.
[45] There is no general provision in Malaysia which requires all subordinate legislation to be laid before the House. The incorporation of express 'laying' provisions is apparently unusual: Jain, *Administrative Law of Malaysia and Singapore,* 1980, p. 99. Nor is there any equivalent of a scrutiny committee. Jain, *ibid.,* p. 111. The situation in Singapore is not markedly different.
[46] Extradition Act 1968, s. 44 is an exception. Certain rules made by the Minister must be presented to Parliament as soon as may be. See also Commonwealth Fugitive Criminals Act 1967, s. 30.
[47] In Singapore the functions of a magistrate under this Act may also be performed by a district judge; s.2(7)(S). The magistrate in Malaysia must be a Magistrate of the First Class.
[48] S.9(l)(a)(S); S.7(1)(M).
[49] S. 10(S); s.8(M), which omits any reference to arrest without warrant. As to the standard of evidence required, see *In re Said Mahomed (No. 1), infra* following *R,* v. *Weil* (1882) 9 Q.B. 701. *Some* evidence is required but very little will do. Exactly how much is a matter for the magistrate to decide.
[50] S. 9(1)(b)(S); s. 7(1) (M), s. 8(3) (M) — by implication.

foreign state, *e.g.* if one or more of the limitations in section 7 applies.[51] Specifically, the Minister may not give a notice if he has substantial grounds to believe that:[52]

(a) the requisition for the surrender of the fugitive, although purporting to have been made in respect of an offence for which, but for this section, he would be liable to be surrendered to that State, was made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or

(b) if the fugitive is surrendered to that State, he may be prejudiced at his trial, or punished, detained or restricted in his personal liberty, by reason of his race, religion, nationality or political opinions.

This provision is commonly called a discrimination clause. It was first used in the European Extradition Convention 1958 and was recommended in the Commonwealth Fugitive Offenders Scheme 1966.[53] The Clause departs from British tradition in that it invites an inquiry into the *bona fides* of the requesting state. English courts have always been extremely reluctant to engage in such inquiry at least with respect to "friendly" governments.[54] This reluctance and the absence of such a clause in any extradition treaty to which Singapore is a party probably explain why the duty to inquire had been reserved to the Minister. The duty is shared by the judiciary in the (U.K.) Fugitive Offenders Act 1967.[55] In *Fernandez* v. *Government of Singapore,*[56] Lord Diplock said that the onus of proof under the section rested on the fugitive but that the onus was not severe — something less than the civil test of probability, "a reasonable chance", "a serious possibility" or "substantial grounds for thinking" that if the fugitive was returned one of other of the events listed might happen.[57] These words can only serve as guidelines for the Minister. Although judicial review remains a theoretical possibility it is difficult to see any practicable way in which the exercise of power under the section — or the failure to do so — can be successfully challenged in a court of law. It is hoped that the judiciary's gain is not the fugitive's loss.

Assuming a warrant of arrest has been issued, what happens next depends on the nature of the warrant. If it is a provisional warrant the magistrate must send a report to the Minister forthwith.[58] The Minister has power to order the release of the fugitive even at this stage.[59] The warrant may be executed forthwith but the hearing of

[51] S.9(2)(S); s.7(2)(M) follows the older United Kingdom provision: If the Minister is of the opinion that the offence is one of a political character he may, if he thinks fit, refuse to send any such order, and may also at any time order a fugitive criminal accused or convicted of such offence to be discharged from custody.

[52] S.8(S). There is no direct Malaysian equivalent but see n. 51.

[53] Clause 8(2).

[54] *Royal Government of Greece* v. *Governor of Brixton Prison ex p. Kotronis* [1971] A.C. 250. It is a point of some interest how the minister's obligation under this provision can be reconciled with the obligation in the treaties to extradite subject only to the limitations in the treaty.

[55] S.4(1).

[56] *Fernandez* v. *Government of Singapore & Ors.* [1971] 1 W.L.R. 987.

[57] *Ibid:,* pp. 993-4.

[58] S.10(2)(3)(S); s.8(2)(M).

[59] S. 10(4) (S); s.8(2)(M).

the application cannot proceed until the magistrate has received the Minister's notice. Pending such receipt the magistrate may remand the fugitive, in custody or on bail, for up to seven days at a time. If the magistrate does not receive the notice within a time which is reasonable having regard to all the circumstances the fugitive should be released and any recognizances discharged.[60]

When both fugitive and notice are before the magistrate, then the hearing, subject to various remands, may proceed. The manner of proceeding is like that of a preliminary hearing, not a trial, with the exception that the fugitive is entitled to adduce evidence that for any reason she or he is not *liable* to be surrendered.[61] The requesting state is required to produce:

(i) A duly authenticated foreign warrant.

(ii) Admissible evidence of the relevant foreign law (to establish that the offence charged is an extraditable one).[62]

(iii) Evidence of identity.

(iv) *Either* such evidence as would in the opinion of the magistrate, according to the law in force in Singapore, justify the trial of the person if the act or omission constituting that crime has taken place in, or within the jurisdiction of, Singapore;[63]

or, if the fugitive has already been convicted and is alleged to be unlawfully at large, sufficient evidence to satisfy the magistrate that the person has been convicted of the crime and is unlawfully at large. In this context "sufficient evidence" would necessarily include a document, duly authenticated, that certifies that a person was convicted on a date specified therein of an offence against the law of the requesting state which is an extraditable offence; evidence of identity, and evidence suggesting, by virtue of the sentence imposed, the fugitive is unlawfully at large.

Failure to produce all these relevant items would normally be fatal to the application, although if the defect is a purely technical one, adjournment may be possible.[64]

[60] S. 11(S); s.8(3)(M). The magistrate is required to fix a reasonable period: *Government of the Federal Republic of Germany* v. *Sotiriadis & Anor.* [1975] A.C. 1. Many of the treaties stipulate a time in which the formal requisition must be received. The seven days provision does not apply in Malaysia.

[61] S.11(6)(S). In the Malaysian Act, under s. 9(2) the magistrate is required to receive *any* evidence tendered to show that the relevant crime was an offence of a political character or is not an extradition crime.

[62] It has been English practice since 1896 to require evidence of the foreign law for this purpose. This practice has apparently been adopted in Singapore and Malaysia. However a recent House of Lords decision ruled that such evidence was only necessary or admissible, where the relevant treaty limited extradition to persons accused of conduct of a particular kind, *e.g.* conduct punishable by more than one year's imprisonment. In all other circumstances unless there was an allegation of bad faith, only English law and the English version of the treaty could be considered: *In re Nielson* [1984] 2 W.L.R. 737. See also, *Government of the United States of America & Others* v. *McCaffery* The Times, London, June 15, 1984. But in Singapore, the foreign state must prove the act or omission alleged is an offence under its law as the requirement is express: see *In re Nielson*, *p.* 745.

[63] Criminal Procedure Code, ss, 141, 142(1). Criminal Procedure Code, ss. 140, 141 (M). As to Malaysia see also *Chua Han Mow* v. *Superintendent of Pudu Prison* [1980] 1 M.L.J. 219, 221.

[64] *R.* v. *Sirdar Khan and Ors.* (1884), 2 Ky. Hab. Corp. Cas. 43.

The fugitive may also adduce evidence.[65] There is nothing to be gained by challenging the validity of the formal requisition: the court will not look behind the Minister's notice.[66] Nor will the magistrate be willing to weigh too closely the credibility of competing witnesses,[67] test the strength of an alibi,[68] or inquire into the minutiae of foreign law and *possible* substantive defences.[69] But the fugitive may be able to establish that the act or omission alleged is not an extradition offence, that she or he is not the person named in the warrant, or that any one or more of the statutory or special treaty limitations on extradition applies. The fugitive is also entitled to attack the admissibility of the requesting state's documents and evidence, but technical defects in the warrant which cause no injustice to the fugitive may be overlooked.[70]

If after all the relevant evidence has been produced the magistrate is satisfied that the fugitive is liable to be surrendered, the fugitive will be committed to prison to await the Minister's final order.[71] Otherwise, the fugitive will be discharged. A fugitive committed for surrender must be informed that he will not be surrendered for the space of at least fifteen days, during which period he may apply for a writ of *habeas corpus.*[72] A report of the prisoner's committal must be sent to the Minister.[73] There is no provision for the requesting state to appeal from the magistrate's decision not to commit but the decision is not an acquittal and the requesting state may apply again.[74]

The fugitive has no direct right of appeal but may apply for *habeas corpus* in Singapore,[75] or similar procedure in Malaysia.[76] The only question for the court to consider is whether the applicant is lawfully detained.[77] Review under *habeas corpus* is normally confined to matters of jurisdiction, but where extradition proceedings are concerned the court is also required to consider whether, on the evidence before the magistrate, any magistrate, properly applying his mind to the question could reasonably have come to the conclusion that, applying the proper test, the fugitive ought to be committed.[78] In considering

[65] *Chua Han Mow* v. *Superintendent of Pudu Prison* [1979] 2 M.L.J. 70, 73.
[66] *R.* v. *Sirdar Khan and Ors. supra*, n. 64; *Ex p. Mutter* (1900-01) 6 S.S.L.R. 60; de Mello, p. 71.
[67] *In re Ng Hock Seng* (1888) 4 Ky. 368.
[68] *Kakis* v. *Government of the Republic of Cyprus* [1978] 1 W.L.R. 779.
[69] *Government of Australia & Anor.* v. *Harrod* [1975] 1 W.L.R. 745.
[70] *In re Charles Rykschroeff, supra*, n. 21; *In re Tadema Wielandt* (1897) 4 S.S.L.R. 74, de Mello p. 566. *In re Said Mohamed No. 1, infra*; *Set Kon Kim* v. *Officer in Charge, Ceras Police Station, supra,* n. 36.
[71] As to the power to retake escaped fugitives, see s. 12(4) (S) and s. 11(3) (M).
[72] S. 12(1) (S); s. 11(1)(M).
[73] S. H(8)(S); s. 10(3)(M).
[74] *P.P.* v. *Abdul Hamid bin Jamal* Vol. III F.M.S. 93.
[75] Criminal Procedure Code, Ch. 33, ss. 326-7.
[76] Criminal Procedure Code, Ch. 36, ss. 365-7 (Malaysia).
[77] Detained normally means in physical custody. It follows that *habeas corpus* would not normally be available where the applicant is on bail. There is, however, a recognised exception for extradition proceedings, *provided* the fugitive has already been committed for surrender: *Re Onkar Shrian* [1970] 1 M.L.J. 28. *Quaere:* if the hearing has been adjourned or not yet commenced and a fugitive on bail has conclusive evidence that he is not liable to be surrendered, must he wait until the hearing is concluded before obtaining a complete discharge? Suppose the fugitive has urgent business abroad? See *U.S.A.* v. *Regand and Gaynor* [1905] A.C. 128, 137-8.
[78] *Set Kon Kim* v. *Officer in Charge, Ceras Police Station*, *supra*, n. 36, p. 74. See also *Schtraks* v. *Government of Israel & Ors.* [1964] A.C. 556; *Armah* v. *Government of Ghana & Anor.* [1968] A.C. 192.

this issue, courts have long been prepared to go beyond the committal warrant and examine the whole of the record. But they will not entertain any appeal against a magistrate's legitimate exercise of his discretion. Nor will the court consider any fresh evidence which was not considered by the lower court unless the evidence is relevant to a question of jurisdictional fact, *e.g.* whether the offence was of a political character or whether the offender was the person named in the warrant.[79]

Habeas corpus is a writ of right. Once the detention has been found to be unlawful the writ must issue. In theory, there is no judicial discretion. However, in the name of justice, the courts have attempted to avoid the absurd. They have permitted some purely technical errors to be corrected even after *habeas corpus* proceedings have begun. Perhaps the most frequent cases are those where the committal proceedings were themselves faultless but some minor error was made in the actual order of committal. This problem has arisen in Malaysia. In *Chua Han Mow* v. *Superintendent of Pudu Prison*,[80] Raja Azlan Shah C.J., relying upon a number of English authorities, said:[81]

> It is established law that a warrant of commitment erroneous in form, even where such error makes it invalid as an authority in law for the detention of a prisoner, can be cured by the issue of a subsequently validly drawn warrant by the competent authority, and that such warrant justifies the continuance in prison of a person who, before the issue of such warrant, may have been held in custody without lawful authority.

The Federal Court upheld the power of the lower court judge to direct the committing magistrate to issue a fresh committal warrant in the proper form. The same practice was followed in *Set Kon Kim* v. *Officer in Charge, Ceras Police Station.*[82]

The errors in both these cases were genuinely minor; use of an incorrect form and a lack of particularity — but care should be taken to ensure that the exception does not become the rule and the writ of right character of *habeas corpus* lost in the *ex post facto* correction of 'technical' defects which really have substantial importance.[83]

There is no appeal for either side from a High Court decision concerning *habeas corpus* in Singapore.[84] There is provision for appeal to the Federal Court in Malaysia.[85]

The fugitive cannot be surrendered until all *habeas corpus* proceedings have been determined. The final decision to surrender a fugitive is made not by a court but by the Minister. In making this decision the Minister is required to consider both the statutory restrictions on surrender and the obligations of the state embodied in

[79] *Schtraks* v. *Government of Israel*, *supra*, n. 78. Fresh evidence may be admitted to cure purely technical defects where no injustice is caused to the prisoner: *R.* v. *Governor of Brixton Prison ex p. Sadri* [1962] 1 W.L.R. 1304.
[80] [1980] 1 M.L.J. 219.
[81] *Ibid.*, p. 220.
[82] *Supra*, n. 36 p. 76.
[83] *Cf. Ex p. Sadri*, *supra*, n. 79.
[84] Criminal Procedure Code, s. 334.
[85] Criminal Procedure Code, s. 374.

recognised treaties.[86] In Singapore, the Minister must also consider the possible applicability of the discrimination clause.[87] Again, the decision is a matter for the Minister's discretion and although judicial review is theoretically available, it is difficult to envisage circumstances in which an application for review would be likely to succeed.[88]

The Minister must also decide whether to direct the delivery to the foreign state of any property in the possession of the prisoner at the time of his apprehension which might be material as evidence in proving the relevant offence.[89] There is no parallel to this provision in the United Kingdom legislation, although it is common in the bilateral treaties. It appeared very early in local legislation. The treaty power has been the subject of local litigation.

In *In re Said Mohamed (No.* 2),[90] the police, at the time of arrest, seized several items they found in the room occupied by the accused. Several days later they returned to this room and seized additional items. Some of these items were concealed in a mattress. No evidence was given as to the exact location of the others. However, the prisoner's wife was still in occupation of the room. Before the order of committal had been *formally* signed, the requesting state, the Netherlands, relying on the relevant treaty, requested the magistrate to make an order for the delivery to the requesting state of all the items seized as evidence of the offence.[91] The magistrate refused on the ground that, having committed the prisoner for surrender, he was *functus officio* and had no further jurisdiction. The requesting state sought a writ of *mandamus* to require the magistrate to consider which of the items should be delivered to them and to make the necessary orders. Fisher J. considered two issues of substance: whether the treaty required the property to have been in the physical possession of the prisoner when the arrest was made and whether the treaty required that both the property and the prisoner must have been seized at the same time. He answered both these questions in the negative. As to the first, constructive as distinct from actual physical possession would surely suffice as in the case of goods in a bank deposit box to which the prisoner had the only key. As to the second, Fisher J. saw no reason to depart from and every reason to adopt what he regarded as the natural and ordinary construction of the words. So long as the property had been in the physical or constructive possession of the prisoner at the time of his

[86] S. 12(2) (S); s. 11(2) (M).

[87] S.8(S).

[88] See *R.* v. *Secretary of State for the Home Department ex p. Kirkwood* [1984] 2 All E.R. 390, wherein the court saw no difficulty in reviewing the Secretary of State's order to surrender in principle although it rejected the basis of review urged by the applicant, i.e. that in view of his pending application to the European Commission on Human Rights *re* possible violation of Article 3 of the European Convention on Human Rights, the decision to surrender was one which no reasonable Secretary of State would have made. The court decided that English law, specifically section 21 of the Crown Proceedings Act 1947 prohibited the granting of an injunction against an officer of the Crown but that in a proper case a declaration would be an appropriate remedy.

[89] S. 12(5) (S); s. 18(M). In Malaysia it is the committing magistrate who has this power, subject to the rights of third parties. The wording is also significantly different.

[90] (1911), de Mello, p. 604.

[91] Article XV of the United Kingdom — Netherlands Treaty provided:
"All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority... has ordered the delivery thereof, be given up...."

arrest, it made no difference when the property was actually seized. It followed that the subsequent seizure of the items concealed in the mattress was clearly permissible. The magistrate was ordered to take further evidence to determine the status of the other items seized after the arrest and then determine whether these items too were in the prisoner's possession at the relevant time.

The terms of Article XV of the Anglo-Dutch Treaty were not unusual. Fisher J. himself noted that corresponding articles were included in more than thirty other British treaties, each of which in his opinion was capable of bearing the construction he had given to Article XV.[92] This was so even in the case of the relevant French and Belgian provisions in which the words used in the English versions were apparently different: i.e. "found in the accused's possession at the time of his arrest." The learned judge interpreted these words in the light of the French versions of these treaties which, in his opinion, were consistent with his preferred interpretation. Clearly, he said, the French and the English versions ought to have the same meaning. He pointed out that the French version of the treaty with Luxembourg used the phrase *"les objects saisis en la possession de l'individu au moment de son arrest"* while the English version used the same words as Article XV. He concluded that the difference in words in the French and Belgian treaties was not intended by the High Contracting parties to reflect a difference in meaning.

There is no conflict between Fisher J's construction of the treaties and the Singaporean statutory provision. However, the Malaysian section uses the phrase 'Everything found in the possession of a fugitive criminal at the time of his apprehension...', words similar to those used in the French version of the French and Belgian treaties just discussed. Notwithstanding Fisher J's analysis of the treaties, it remains true that a literal interpretation of these words does suggest contemporaneous seizure of person and property is required. Further, while there may be some basis for supposing that the difference in the wording of the treaties does not reflect an intention to produce a different meaning, the French treaty being amongst the first negotiated after 1870 and the Belgian treaty being a straight copy in this respect, there is nothing in the Malaysian Act to suggest anything other than a literal interpretation was intended. The phrase 'the time of his apprehension' could be interpreted generously, but, it is submitted, could not reasonably be said to extend to several days. Thus, if Fisher J's interpretation of the treaties is accepted, at least with respect to Malaysia, some treaty provisions would seem to purport to impose an obligation to deliver property to a requesting state which the legislation does not expressly permit.

As to the magistrate's belief that he was *functus officio;* the magistrate had relied on two old cases, *R.* v. *Lushington, ex p. Otto*[93] and *In re Borovsky and Weinbaum, ex p. Salaman.*[94] In the former case, the claimant to certain property of which a Magistrate, after having committed a prisoner for surrender, had directed a constable to take charge for the purpose of delivery to France, sought an order

[92] *Ibid.*, 613.
[93] [1894] 1 Q.B. 420.
[94] [1902] 2 K.B. 318.

under the Justices Protection Act[95] requiring the Magistrate to deliver the property to her. The court held that under the terms of the Act they had no jurisdiction to make such an order. In the course of his judgment Wright J. remarked:[96]

> Then, again, I agree with the learned counsel for the applicant that the magistrate is *functus officio,* and that section only enables us to order the magistrate to perform his duty; if his duties are over, there is nothing for us to order him to perform.

Commentators and courts alike have construed these words to mean that, having committed the prisoner for surrender, the magistrate's duty was finished so that he had no further power to make any direction about any property.[97] With respect, Fisher J. is correct in rejecting this construction. The court in *Lushington* meant only that the magistrate had no jurisdiction in the extradition proceedings to return the property in *custody legis* to the claimant when title to the property was undetermined.

That this is so can be clearly seen from *Borovsky's* case, decided by the same judge. In that case the court directed a magistrate who had already committed the prisoner for surrender to perform his duty under the Belgian treaty and consider which of certain items seized by the police ought to be delivered to the foreign authorities. The judge would not have so ordered if he believed the magistrate to be *functus officio.* It is true that, the magistrate having made the selection, Wright J. himself made the Order for delivery — but there was no suggestion that the magistrate could not have done so, at least at first instance.

Any contrary result is surely highly impractical and unnecessarily obstructionist. There is no basis for such a restriction of the magistrate's powers in the legislation and no benefit to be gained by reading it in.

In Malaysia, as in most of the treaties, the concurrence of the Minister is not required. However the Minister's co-operation could be useful in obtaining an undertaking from the foreign government that after the trial the property would be returned so that title might be established. That advantage has been suggested in English case law and may be the reason behind the Singaporean provision.

C. *Time Limitations on Return*

It is obvious that even after the prisoner has been committed immediate surrender may be impracticable or impossible. The Minister has two months within which to make all the necessary arrangements. A prisoner who has not been returned after that time may apply to a court for release and will be released unless sufficient cause is shown to the contrary.[98]

[95] 11 & 12 Vict, c.44, s. 5.
[96] *Ibid.*, 424.
[97] *E.g.* Sir Edward Clarke, *Extradition* (4th ed. 1903) 235. Sir Francis Piggot, *Extradition* (Butterworths, London, 1910) 271.
[98] S. 13(S); s. 12(M).

D. *Limitations on Surrender*

(a) *Double Criminality*

A fugitive cannot be surrendered for trial or punishment, other than for an extradition crime or offence.

> The Singapore Act defines "extradition crime" as follows:[99]
>
> "Extradition crime," in relation to a foreign State, means an offence against the law of, or of a part of, a foreign State and the act or omission constituting the offence or the equivalent act or omission would, if it took place in or within the jurisdiction of Singapore, constitute an offence against the law in force in Singapore that —
>
> (a) is described in the First Schedule to this Act, or
>
> (b) would be so described if the description concerned contained a reference to any intent or state of mind on the part of the person committing the offence, or to any circumstance of aggravation, necessary to constitute the offence.

The double criminality requirement is express and clear. The offences listed in the Schedule are to be interpreted according to Singapore law.[1] By virtue of sections 4 and 5 of the Act, the act or omission alleged must also come within the terms of one or more of the offences listed in the relevant extradition treaty. The list of extraditable offences may thereby vary for different foreign states. The onus is on the requesting state to prove that the act or omission alleged comes within all three requirements. It is not necessary that the offence be given the same name in each country, nor that all the elements of a relevant offence be identical provided that the particular facts amount to an offence in both states.[2] The list of offences in the Schedule is fairly standard,[3] but certain offences relating to aircraft were added by the Hijacking and Protection of Aircraft Act 1978.

"Extradition crime" is defined in the Malaysian Ordinance as "a crime which if committed in the Federation would be punishable under the law of the Federation and would be one of the crimes described in the first Schedule to this Ordinance."[4] Double criminality is thus implied. The requesting state could not in good faith apply for the return of a fugitive for acts or omissions which did not constitute offences under its own laws. The offence must also be included within the lists of the relevant treaty.[5] The list in the Schedule is to be interpreted according to Malaysian law.[6] The actual list is similar to Singapore's list.

Additions or deletions to the list of offences may be made in Singapore by the Minister[7] and in Malaysia by the Yang di-Pertuan

[99] S.2(1)(S); s.2(M).

[1] S.2(1)(S).

[2] *In re Said Mohamed No. 1*, *infra.*

[3] Part A follows the form of Relevant Offences in the United Kingdom Fugitive Offenders Act 1967 (the recommended list of the Commonwealth Scheme — a consequence of joining all extradition schemes into one act).

[4] S.2(M).

[5] Ss. 3, 4(M).

[6] S. 22(1) 'except where otherwise specially provided' seems redundant as there is no such special provision.

[7] S.45(S).

Agong.[8] In either case, notification in the *Gazette* will suffice. This is a further instance of executive rather than parliamentary control. In the United Kingdom the list of offences may only be altered by statute.

The fact that the fugitive could also be tried for the alleged offence in the requested state is not itself a bar to extradition, although it may be a ground for the Minister's ultimate refusal.[9] However, proceedings which have already begun will delay surrender in Singapore.

(b) *Political Offences*

Much has been written about the political offences exception — more than might seem warranted by its infrequent invocation.[10] The Singapore legislation contains several references to the political offences exception:

> s. 7(1) A person shall not be liable to be surrendered to a foreign State if the offence to which the requisition for his surrender relates is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character.
>
> s. 2(4) For the purposes of this Act, an offence against the law of a foreign State... may be regarded as being an offence of a political character notwithstanding that there are not competing political parties in that State or country.

Section 7(1) is a binding limitation which speaks to the committing magistrate, the High Court on a *habeas corpus* application, and the Minister alike. But these institutions reach decisions in different ways. They tend to see themselves as performing different functions. It is not therefore surprising that in the United Kingdom where similar provisions have been considered the courts and the executive have developed very different approaches towards their apparently identical tasks.

The judges, more familiar with rules than politics, have been concerned to give some definite limits to the concept of "political character". The concept they developed could have been either broad or narrow but it had to be clear and capable of certain application. Only in that way could the judges at least appear to be applying rules rather than making political judgments. At the same time the judges were very conscious that theirs was not the final say. The minister would always have the last word: acts of clemency could safely be left to him. It is for these reasons that early judicial interpretations of

[8] S.22(2)(M).

[9] S.7(3)(S); *In re Golam Hussain* (1879) 4 S.S.L.R. 64; s. 5(3)(M).

[10] Recent literature includes Van den Wijngaert; Shearer, *Extradition in International Law,* 166-193; Amerasingh, "The Schtraks Case, defining political offences and extradition" (1965) 28 Mod. L. Rev. 27; Bassiouni, "The political offence exception in extradition law and practice" in Bassiouni, (ed.) *International Terrorism and Political Crimes* (C. Thomas, Springfield, 1975), 398-447; Carbonneau, "The Political Offence Exception to Extradition and Transnational Terrorists: Old Doctrine Reformulated and New Norms Created" (1977) 1 A.S.I.L.S. Int. L.J. 1; Gold, "Non-extradition for Political Offences: The Communist Perspective" (1970) 11 Harv. Int. L.J. 191; Thornberry, "Is the Non-surrender of Political Offenders Outdated?" (1963) 26 Mod. L. Rev. 555; Young, "The Political Offence exception in the Extradition Law of the United Kingdom: a Redundant Concept?" (1984) Vol. 4 Legal Studies 211.

"political character" were extremely narrow. The judicial concept was only intended as a safety floor beneath which the executive would not be permitted to go. Where the minister chose to draw the line above that floor need not be a matter for judicial concern.

When the English provision was first considered, the court held that to come within the clause the crimes alleged must have been "incidental to and formed part of political disturbances."[11] In *In re Meunier* Cave J. added a further qualification:[12]

> It appears to me that, in order to constitute an offence of a political character, there must be two or more parties in the State, each seeking to impose the Government of their own choice on the other, and that, if the offence is committed by one side or the other in pursuance of that object, it is a political offence, otherwise not.

This satisfactorily disposed of anarchists but was unsatisfactory sixty years later when the Polish Government sought the return of seven seamen who had staged a bloodless mutiny for the purpose of escaping political persecution and seeking asylum in the west.[13] Section 2(4) of the Singaporean Act, originally section 4(4) of the Australian Extradition (Foreign States) Act 1966, was designed to meet such a case.

The exclusion was comprehensively discussed in *Schtraks* v. *Government of Israel.*[14] Lord Radcliffe described the idea behind the phrase. The fugitive must be:[15]

> … at odds with the State that applies for his extradition on some issue connected with the political control or government of the country…. It does indicate I think that the requesting State is after him for reasons other than the enforcement of the criminal law in its ordinary, what I may call its common or international, aspect.... This description, not intended as a definition but as a statement of the core of the idea, has been widely accepted in subsequent cases.[16] A broader description was suggested by Lord Reid [17] but apart from a very strong dissent from Lord Simon of Glaisdale, joined by Lord Wilberforce, in *Cheng's* case,[18] Lord Radcliffe's description has provided the basis for current views.

In *R.* v. *Governor of Brixton Prison, ex p. Budlong,* the court referred to another passage in Lord Radcliffe's speech: "The analogy

[11] *Re Castioni* [1890] 1 Q.B. 149, 165-6.
[12] [1894] 2 Q.B. 415, 419.
[13] *R.* v. *Governor of Brixton Prison ex p. Kolczynski & Ors.* [1955] 1 Q.B. 540. The court had no difficulty in describing the offence as political. Return in such circumstances was inconceivable but the court could not satisfactorily rationalise this decision.
[14] [1964] A.C. 556.
[16] *Ibid.,* p. 591.
[16] *Cheng* v. *Governor of Pentonville Prison* [1973] A.C. 931; *Royal Government of Greece* v. *Governor of Brixton Prison, ex p. Kotronis*, *supra*, n. 54; *R. v. Governor of Pentonville Prison ex p. Budlong & Anor.* [1981] 1 All E.R. 701; *In Re State of Wisconsin and Armstrong* (1973) 32 D.L.R. (3d.) 265; *Re Wilson, ex p. Witness T.* 10 A.L.R. 97, 100-1; *R.* v. *Governor of Winson Green Prison, Birmingham, ex p. Littlejohn* [1975] 3 All E.R. 208.
[17] *Schraks* v. *Government of Israel*, *supra*, n. 78 pp. 583-5.
[18] *Supra*, n. 16 pp. 951-60.

of 'political' in this context is with 'political' in such phrases as 'political refugee,' 'political asylum,' or 'political prisoner'."[19] The applicants in *Budlong* could not be regarded as political refugees seeking asylum in the United Kingdom, hence their offences could not be regarded as offences of a political character.[20] In *Re Gross,* Chapman J. went one step further when he said:[21] "The latest and most authoritative test... is whether the fugitive... could claim with any prospect of success political asylum...."

Both these opinions may be regarded as extensions of Lord Radcliffe's views, although *Re Gross* at least must be considered rather extreme. Nor is equating the exception with a right to political asylum a surprising consequence of shifting the emphasis away from the offence or the offender to the attitude towards the offender of the requesting state. Humanitarian concern for the politically persecuted and oppressed has always been an important aspect of political asylum. It has already been noted that persons protected by the Convention Relating to the Status of Refugees may not be deported to states where there is a risk they may be subject to persecution. And although the Refugees Convention does not protect refugees from extradition, the European Convention for the Protection of Human Rights and Fundamental Freedoms has occasionally been applied to cases of extradition. However, the adoption of this emphasis in extradition proceedings is a comparatively recent development which has had, and will continue to have, very far reaching consequences.

In particular, the concern for the treatment of politically significant fugitives has led to the widespread adoption of what is commonly called a discrimination clause. Such clauses prohibit surrender where the appropriate authority in the requesting state is satisfied the request for extradition, though purportedly for an ordinary crime, has in fact been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that the person's position may be prejudiced for any of those reasons. Such a clause was included in the 1966 Commonwealth Scheme, in the European Convention on Extradition, the International Convention against the Taking of Hostages 1979, and the European Convention on the Suppression of Terrorism,[22] amongst others. The widespread adoption of these clauses has caused some to question the future role of the political offences exception.[23] In addition, the Convention on the Prevention and Punishment of Genocide 1948 specifically provided that the crime of genocide as defined in the Convention was not to be regarded as a political offence. The role of the exception with respect to international terrorists has also caused considerable debate. The European Convention for the Suppression of Terrorism 1977 also provides that the exception may not be applied to the offences specified therein.

[19] [1964] A.C. 556, 591; [1962] 3 All E.R. 529, 540.
[20] [1980] 1 W.L.R. 1110, 1125; [1980] 1 All E.R. 702, 704.
[21] [1969] 1 W.L.R. 12, 19.
[22] The clause is optional in the latter Convention. For a discussion of the problems involved in applying the clause see Van den Wijngaert, *ibid*., 82-89; 214-218. See also Hartley Booth, *British Extradition Law and Procedure* Vol. 1 (Sijthoff & Noordhoff, Netherlands, 1980) 177-179.
[23] See, in particular, Van den Wijngaert *ibid.*, 201-209; Young *ibid;* Williams & Castel, *Canadian Criminal Law: International and Transnational Aspects,* 193-228.

In the light of these developments the meaning and utility of the political offences exception will need to be examined, an urgent task which unfortunately cannot be undertaken here. A number of recent publications on the issue have already been referred to. In the meantime, there is no reason to suppose either Singapore or Malaysia would adopt a distinctive interpretation of the phrase, at least in the absence of a new discrimination clause.

One other aspect of the relevant Malaysian provision should be mentioned. Section 5(1) of the Extradition Ordinance closely follows its United Kingdom predecessor and includes the words, "or if he proves to the satisfaction of the magistrate, or of the Supreme Court when brought before it on an application to be set at liberty, or to the Minister, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character."

United Kingdom courts have experienced great difficulty in interpreting these words. Several possibilities have been suggested.[24] Professor Shearer has suggested that the paragraph is intended to reinforce the speciality provision with respect to political offences.[25] This would involve an allegation that the requesting state was acting in bad faith, something which, prior to the advent of the discrimination clause, English courts have consistently refused to consider. Then, in *Schtraks*,[26] Lord Radcliffe suggested that the paragraph was intended to make clear that the fugitive was entitled to adduce evidence to show that, what on the requesting State's evidence looked like an ordinary criminal offence, was in reality an offence of a political character. Whatever is the correct interpretation, the paragraph has never proved to be of the least use and, if a discrimination clause and an equivalent of section 8(2)(b) of the Commonwealth Fugitive Criminals Act 1967 [27] were adopted, it could safely and beneficially be removed.

(c) *Speciality*

Speciality is a necessary back-up to double criminality and the political offences exception. The Malaysian Ordinance provides:

S. 5(2).

> A fugitive criminal shall not be surrendered to a foreign country unless provision is made by the law of that country, or by arrangement, that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to the Federation, be detained or tried in that foreign country for any offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is grounded.

This provision is identical to section 3(2) of the 1870 Act. English courts have not interpreted the clause strictly but have accepted any provision or arrangement which prohibits detention or prosecution for any offence committed, or allegedly committed, prior to the return other

[24] See *Re Anon* (No. 1) [1896] 1 Q.B. 108, 114; *Ex p. Kolczynski*, *supra*, n. 13, *per* Lord Goddard, at p. 550.
[25] *Ibid.,* 174-175.
[26] *Supra*, n. 78 pp. 587-9.
[27] S.8(2)(b) is discussed in Part IV B of this article.

than an extraditable offence established by the facts on which the requisition was based: see for example the Anglo-Swedish treaty of I960.[28] Section 7(2)(a) of the Singapore Act is less restrictive. Except that the word 'arrangement' is replaced by 'treaty', the text follows the Malaysian section 5(2) until the last few lines. The final part of section 7(2)(a) reads: "other than the offence to which the requisition relates or any other offence of which he could be convicted upon proof of the facts on which the requisition was based. . . ." Section 7(2)(b) requires like provision for the surrender of the fugitive to a third state.

In practice the speciality restriction gives only limited protection to the fugitive. The requesting state may be required to prove the relevant foreign law or arrangement but English courts have adopted a flexible approach. In most cases proof of the provisions of the treaty suffices. Where this was not sufficient because the fugitive would be tried by the state courts of a federation, the English courts have accepted affidavit evidence that the relevant constitution requires all such state courts to comply with the terms of federal treaties,[29] and relevant judgments of authoritative courts to the same effect.[30] In one case the court accepted a circular issued by a Minister to his departmental officials.[31] An affidavit from a government Minister testifying to the existence of a permanent arrangement or temporary undertaking to comply with the speciality restriction will be conclusive.

Once the law or arrangement has been established, the English courts have refused to look further and question the *bona fides of* the requesting state. They will assume, even in the face of some evidence to the contrary, that the requesting state will abide by its obligations and its laws.[32] Of course the Minister need not feel similarly inhibited.

The speciality limitation has traditionally been a binding jurisdictional restriction, speaking both to the judiciary and to the executive in the same manner as the political offences clause. That this was so was recognised in the Straits Settlements as early as 1896. The Order in Council of 19 August 1889 applied the procedure of the Extradition Act 1870 to extradition between some of the states of the Malay Peninsula and the Straits Settlements. In *In re C.R. Moody*,[33] the requesting state, Perak, claimed that under the Order speciality was a matter for the Governor, not for the court, but Law J. disagreed. He preferred to follow the English practice wherein the judges had discharged the fugitive on the failure of the requesting state to comply with the speciality restriction. He agreed that the Governor had a final discretion to discharge a fugitive whom the court had committed but speciality went to jurisdiction to commit in the first place and the court could not close its eyes. It being admitted there was no speciality

[28] Sweden (Extradition) Order *1966*, SI 81966, No. 226.
[29] *Atkinson* v. *Government of the United States of America* [19711 A.C. 197.
[30] *Re Woodhall* (1888) 57 L.J.M.C. 72.
[31] *Re Bouvier* (1872) 42 L.J.Q.B. 17.
[32] *Atkinson* v. *Government of the United States of America, supra,* n. 29; *Royal Government of Greece* v. *Governor of Brixton Prison ex p. Kotronis*, *supra,* n. 54, pp. 278-9; *Re Johann Wenzl* (unreported) Q.B. No. 282/74, mentioned by Booth, *British Extradition Law and Procedure* Vol. 1, (1980), p.67. There was evidence in that case that the German authorities intended to deal with the fugitive for other offences as well.
[33] *In re C.R. Moody* (1879) 4 S.S.L.R. 46.

provision in Perak, and no relevant treaty provision either, the fugitive was discharged.

Some doubt was raised by Syed Othman J. in *Chita Han Mow* v. *Superintendent of Pudu Prison.*[34] a decision arising under the new extradition without treaty provisions of the Malaysian Ordinance. He refused to consider the issue of speciality, holding that this was a matter for the Minister, not for the court. He said:[35]

> I do not also consider it proper for the court here to impugn the credibility or integrity of a foreign Government seeking the extradition of a fugitive criminal by requiring it to give an undertaking that he would not be charged for offences other than those specified in the requisition. The courts here must assume that the foreign Government will honour its own requisition and will give the fugitive criminal fair and proper hearing only on the charges in the requisition, or as allowed by the courts here, and nothing else.

Any distinction between the law of the foreign state and the *bona fide* intention of the government to comply with that law or with any special undertaking was ignored.

However, on appeal the Federal Court emphasized that speciality was a requirement to be complied with before a fugitive can be surrendered.[36] The court went on to consider whether the requirement had been satisfied and concluded that it had.[37] The continued application of the U.K.-U.S. Treaty of 22 November 1931 to Malaya after independence had been acknowledged by both countries through an exchange of notes in 1958. The existence or otherwise of any Order under section 3(1) of the Ordinance was therefore irrelevant. The 1931 Treaty contained an adequate speciality clause and it was sufficient:[38]

> ... for the purpose of satisfying the requirement of section 5(2) of the Ordinance... if there can be found somewhere an undertaking on the part of that foreign country... that the principle of speciality is guaranteed.... We have found it as a fact that the 1931 treaty although it has not been gazetted, read with the exchange of letters constitutes an undertaking in compliance with the requirement of section 5(2) of the Ordinance.

The point arose again in *Set Kon Kim* v. *Officer in Charge, Ceras Police Station.* In that case Mohamed Zaiddin J. observed:[39]

> I think, I ought to emphasize here that the speciality, rule is a mandatory provision that has to be observed by the Courts in the foreign countries before a fugitive criminal can be surrendered to a foreign country.

In that case the requirement of section 5(2) was clearly satisfied by the terms of the Australian Extradition (Commonwealth Countries) Act

[34] [1979] 2 M.L.J. 70.
[35] *Ibid.* p. 72.
[36] [1980] 1 M.L.J. 219, 221.
[37] There is a precedent for the production of fresh evidence in *habeas corpus* proceedings for the purpose of clarifying this point: *Atkinson* v. *Government of the United States of America* [1971] A.C. 197.
[38] *Ibid.* p. 222.
[39] [1984] 1 M.L.J. 60, 75.

1966,[40] annexed to an authenticated bundle of documents so that it was not necessary that the statute be proved by expert evidence. The statute was reinforced by a note from the Australian government, interpreted by the learned judge as an undertaking to comply with Malaysian speciality rules. Following the previously quoted words of Raja Azlan Shah C.J. in *Chita Han Mow's* case, the learned judge supposed that this note alone would have sufficed but the existence of a statutory provision made it unnecessary to decide the point.

It should be noted that both these later decisions assume that the authorities and courts of the requesting states would regard themselves as bound by the speciality provisions which apply in their respective states to fugitives returned pursuant to extradition treaties when in each case the fugitive was not really returned pursuant to any treaty obligation at all but by virtue of the special extradition without treaty procedure recently incorporated in the Malaysian legislation. With respect, that assumption may be completely false.[41] Given the possibility that the relevant authorities might not regard themselves as so bound, perhaps the question Mohamad Zaiddin J. should have considered was not whether the note from the Australian government would have been sufficient by itself but whether such a note was legally required in every case brought under the special procedure unless the laws of the requesting state clearly showed that speciality protections would apply even where a fugitive had not been returned pursuant to a treaty.

Treaty provisions or executive undertakings are of limited use to a returned fugitive unless he is able to rely upon them in a court of law, whether as a bar to prosecution, detention or some other form of official action. Section 19 of the Imperial Extradition Act 1870 provides a fugitive returned to the United Kingdom with the means to enforce limited speciality protection in a court of law. At the same tune the section provides sufficient guarantee of speciality protection to satisfy the requirements of most foreign extradition laws. The Singapore and Malaysian equivalents of this section are slightly different and raise interesting questions of interpretation which can only be touched on here.

Extradition Act 1968, section 17 is a mirror image of section 7(2) except in one particular.[42] There is no mention of a treaty. One wonders therefore whether the section can be invoked by persons returned to Singapore by less formal means. The equivalent Malaysian provision is different in so far as it says "in pursuance of any *arrangement* for the mutual surrender of persons."[43] Singapore's provision excludes both detention and trial, Malaysia's excludes only trial. Would a person returned for offence A have any remedy if the Malaysian authorities decided to detain that person for offence C of which he had been convicted and sentenced prior to surrender? The government would probably be in breach of its treaty obligations but would that be enough?[44]

[40] *Ibid.* 75.
[41] *R.* v. *Corrigan* [1931] 1 K.B. 527.
[42] See also s. 17 (M). Offences for which trial is possible are not confined to extradition offences; *cf.* s. 5(2).
[43] S. 17(M) (emphasis added).
[44] *R*, v. *Davidson* [1977] Crim. L.R. 219. The court refused to take any notice of the relevant German treaty. Article 19, a speciality provision in the terms of the 1870 Act, was the only restriction on the court's jurisdiction; see also *R.* v. *Corrigan* [1931] 1 K.B. 527.

Both provisions use the words "detained or tried" or "triable or tried" for any offence. Can a person returned under a treaty invoke the protection of the section in case of preventive detention, which may not relate to any offence at all?

Neither section mentions fines. Fines imposed before surrender can be collected. In Singapore it is standard practice when imposing a fine to stipulate a period of imprisonment in default. Does the section preclude sending the fugitive to prison in default of a fine, at least until the fugitive has a reasonable opportunity to leave? In a recent English decision the court distinguished between imprisonment to enforce payment of a fine and imprisonment as a true alternative sentence.[45] The former might be permissible,[46] the latter certainly was not.

The speciality restriction has been the source of some criticism. It is not improbable that in the course of investigating the offence for which a fugitive was returned, other, perhaps even more serious, offences would come to light. Speciality may prohibit any prosecution for the new offences until the fugitive has had a reasonable opportunity to flee the jurisdiction. The problem is particularly acute in white collar crime cases involving numerous frauds, forgeries, bad cheques, embezzlements, kick backs and so on. In their present forms, the speciality limitations of Singapore and Malaysia make the use of specimen charges impossible.

One possible solution to this problem has been adopted in Australia. A discretion is given to the Attorney-General to consent to a fugitive returned from Australia being tried or detained for extradition offences other than those contained in the warrant of surrender. Conversely persons surrendered to Australia may be detained or tried for offences other than those for which they were returned if the competent foreign executive authority consents.[47] These 1973 provisions have not been included in Singapore legislation for foreign states but they have been adopted for Commonwealth jurisdictions.[48]

(d) *Other Limitations*

A person may not be surrendered from Singapore if he is already confined or on bail, or serving any sentence in Singapore with respect to any offence, until all the proceedings have been disposed of and any sentence of imprisonment imposed has been served.[49] The Singapore Act also contains a double jeopardy prohibition, which applies whether in respect of another offence constituted by the same act or omission.[50] There is no Malaysian statutory equivalent to the provision but the restriction is a common one in extradition treaties.

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45 *R.* v. *Uxbridge Justices, ex p. Davies* [1981] 1 W.L.R. 1080.

46 *Pooley* v. *Whetham* (1880) 15 Ch. D. 435.

47 Extradition (Foreign States) Act 1966, ss. 13(2)(a)ii, (b)ii, and 23(a)ii, (b)ii; Extradition (Commonwealth Countries) Act 1966, s. 21(3), s. 11(3)(a)ii, s. 11(3)(b)ii, s. 23(a)ii, s. 23(b)ii.

48 S. 21(3)(S).

49 S. 7(3)(S), s. 5(3)(M). Note that the Malaysian provision follows the 1870 U.K. Act — "any offence within the Federation, not being the offence for which his surrender is asked." Concurrent jurisdiction is no bar to extradition.

50 S. 7(4)(S). But see *R.* v. *Thomas* [1984] 3 All E.R. 34.

There is one notable omission from the statutory limitations of each country. Following British practice, the fact that the fugitive is a national of the requested state is not necessarily a bar to extradition. However, many treaties do contain a reciprocal restriction to nationals, which restriction, not being inconsistent with the silence of the legislation, will be enforced.[51]

E. *Evidence*

Ever since the time when extradition arrangements with civil law jurisdictions were regarded as desirable, common law legislators have realised that there must be some relaxation of evidentiary rules relating to the admissibility of documentary and hearsay evidence, authentication requirements and so on. Special provision for the admission of depositions and the authentication of warrants and other documents was made in the Extradition Act 1870. Both Singapore and Malaysia have modern equivalents.[52]

Unfortunately common law judges at first proved less flexible, and early Straits Settlements judges were no exception.[53] Modern Commonwealth legislation has attempted to be more facilitative; for example Extradition Act 1968, section 42(1) begins as follows:

> 42(1) In a proceeding under this Act —
>
> (a) a document, duly authenticated, that purports to set out testimony given on oath, or declared or affirmed to be true, by a person in a proceeding in a... foreign State shall be admissible as evidence of the matters stated in the testimony;

An Australian court, applying an identical provision was still prepared to consider that the hearsay exclusion rule might apply,[54] although the tone of Australian decisions is increasingly facilitative.[55] A recent Malaysian decision concerning the authentication requirements for certain documents also shows a pleasing flexibility.[56] Many common law evidence rules were developed to deal with juries. They serve little practical purpose where a judge is sitting alone. This has already

[51] *R.* v. *Wilson* (1877-78) 3 Q.B.D. 42.

[52] S. 42(S). Note s. 42(1) (a): "a document, duly authenticated, that purports to set out *testimony given on oath,* or *declared or affirmed to be true*...". Ss. 14, 15(M), S.14 follows the 1870 Act s. 14, and concerns the admissibility of depositions or statements taken on oath. Oaths present particular problems for many civil law jurisdictions. S. 14 of the 1973 Amendment extended s. 14 to include 'affirmations taken in a foreign state, and copies of such affirmations,' but this provision seems to have been overlooked by the Malaysian draftsman. Note however that a fugitive's complaint that in relying on depositions taken before a grand jury when he was not present, the court had deprived him of his right of cross-examination was rejected. The fugitive had chosen to stay away from the hearings and in any case would have the right to cross-examine at the trial. *Chua Han Mow v. Superintendent of Pudu Prison* [1979] 2 M.L.I. 70, 73. The judge's attitude may have been different if subsequent cross-examination of the deponents had not been available?

[53] See *R. v. Sirdar Khan & Ors.* (1884) 2 Ky. Hab. Corp. Cas. 43; *In re Piper* (1887) 4 Ky. 21.

[54] *Bedgood* v. *Keeper of H.M. Penitentiary at Malabar & Anor.* 36 F.L.R. 356, 364.

[55] See *Ingram* v. *Attorney-General for the Commonwealth* [1980] 1 N.S.W.L.R. 190.

[56] *Set Kon Kim* v. *Officer in Charge, Ceras Police Station, supra,* n. 36, pp. 74-5. For recent liberal United Kingdom decisions on affirmations see *R.* v. *Governor of Pentonville Prison ex p. Singh* [1981] 3 All E.R. 23; *Dowse* v. *Government of Sweden* [1983] All E.R. 123 (H.L.).

been recognised in domestic trials in Singapore and Malaysia. It is to be hoped that extradition proceedings will receive the full benefit of this realisation.[57]

IV. Intra-Commonwealth Extradition

The Fugitive Offenders Act 1881 [58] provided a simple extradition procedure for the Empire. Extradition offences included any offence which was punishable in the *requesting* state with a term of imprisonment with hard labour of at least twelve months. There was no double criminality, no political offences exception (in fact treason was an extraditable offence) and no speciality restriction, *autre fois* or similar provisions. There was a requirement that the requesting state provide the court with evidence sufficient to raise a strong or probable presumption that the fugitive committed the offence alleged. A superior court might discharge a committed fugitive if it appeared that:[59]

> … by reason of the trivial nature of the case, or by reason of the application for the return of a fugitive not being made in good faith in the interests of justice or otherwise, it would, having regard to the distance, to the facilities for communication, and to all the circumstances of the case, be unjust or oppressive or too severe a punishment to return the fugitive either at all, or until the expiration of a certain period….

This provision and its descendants will be referred to as "unjust or oppressive clauses". The final decision to surrender was made by the executive.

This Act was the starting point for both the Singapore and the Malaysian provisions. Both states passed new legislation in the light of the Commonwealth Fugitive Offenders Scheme 1966. The results are, however, surprisingly different and must be considered separately.

A. *Singapore*

The relevant provisions are contained in Part IV of the Extradition Act 1968. Many duplicate Part II provisions. Only the differences will be mentioned here.

(i) There is no requirement for a formal treaty but neither does Part IV apply automatically to every member of the Commonwealth as in the old system. The Minister may declare a particular country to be a Commonwealth country for the purposes of the Act; Part IV then applies to that country subject to any limitations, conditions, exceptions or qualifications listed in the Minister's declaration.[60]

(ii) There are only three general restrictions upon surrender: a political offences exception; current custody, prosecution or punishment; *autre fois acquit* or *convict.*[61]

[57] It should be noted that the political offences exception has always been a special case in matters of evidence. Compliance with the rules of evidence is not required before a court will consider the fugitive's evidence.

[58] 44 & 45 Vict. c. 69.

[59] Fugitive Offenders Act 1881, s. 10.

[60] S. 18(S).

[61] S. 20(S).

(iii) Surrender should be refused if either the magistrate, the court to which a person has applied for *habeas corpus,* or the Minister is satisfied that by reason of:

(a) the trivial nature of the offence that the person is alleged to have committed or has committed; or

(b) the accusation against the person not having been in good faith or in the interests of justice; or

(c) the passage of time since the offence is alleged to have been committed or was committed,

and having regard to the circumstances under which the offence is alleged to have been committed or was committed, it would be unjust, oppressive or too severe a punishment to surrender the person.[62] A magistrate's decision not to discharge under this provision may be reviewed during *habeas corpus* proceedings.[63]

(iv) Surrender must be refused by the Minister unless provision is made by the law of the requesting country or that country has entered into an agreement with or given an undertaking to Singapore that the speciality restrictions will be complied with. The form of the restriction follows the recommendations of the Commonwealth Scheme. The prohibition applies to any prior offence other than "the offence to which the requisition for his surrender relates or *any lesser offence"* [emphasis added] and extends to the surrender of the fugitive by the requesting state to any third state. However, the Minister may upon request consent to the fugitive being detained or tried for "any other extradition crime."[64]

(v) Where a fugitive is returned from another declared Commonwealth country, section 31 offers reciprocal speciality guarantees.

(vi) The definition of an extradition crime is different, though the list of offences remains the same. There is an additional requirement that the offence must be one against the law of, or of a part of, a declared Commonwealth country, the maximum penalty for which is either death or imprisonment for not less than twelve months. This also conforms with the Commonwealth Scheme.[65]

These differences may be summarised as follows: a limited transfer of responsibility from the courts to the executive and an unjust or oppressive clause more restrictive that its predecessor due to the inclusion of other safeguards. The new form of the latter follows the Commonwealth Scheme recommendations. Its predecessor was twice considered by the local courts.

In *R.* v. *Haji Said*,[66] the court held that the words "trivial nature of the case" in section 7 of the Straits Settlements Fugitive Offenders Order 1904 included not only cases where the charge itself was trivial but cases where the charge was serious but the evidence indicated it had no basis or foundation in reality. This interpretation was doubted in the later case of *Sellapan Kavandan* v. *R.*[67] Kavandan was a labourer

62 Ss. 21(2), 25(S).
63 *Daemar* v. *Parker* [1970-79] 45 F.L.R. 405 and see below.
64 S.21(3)(S).
65 Clause 2 thereof.
66 (1905) 9 S.S.L.R. 86; de Mello p. 576.
67 (1915) 13 S.S.L.R. 11; de Mello p. 622.

who, it was alleged, had left his employment in Kuala Lumpur without giving the requisite notice for which "offence" he could be liable to pay the complainant thirty days wages ($10) by way of compensation. The payment could have been recovered in the same manner as a fine. The learned judge had no difficulty in concluding that it would, by reason of the trivial nature of the "offence" be too severe and oppressive to order the defendant's return.

The leading English case on the new provision is *R.* v. *Governor of Pentonville Prison, ex p. Narang*.[68] There are also a number of Australian decisions, potentially influential in Singapore as the local provision is derived from the Australian section.[69] The tone of the Australian decisions is very restrictive. Injustice or oppression alone will not suffice, but must be the *result of* one or more of the matters in paragraphs (a), (b), or (c) mentioned above.[70] This restriction caused difficulties in *Daemar v. Parker*[71] where none of the paragraphs applied. The judge in that case would have liked to grant the applicant relief. He was satisfied that the charge in the information was "mistaken", even misconceived, but there was no question of delay. "Triviality" referred to the nature of the offence alleged in the warrant (in this case theft of a valuable security worth A$l,300), not the standard of evidence of likelihood of conviction. The submission of lack of good faith also failed. There was no suggestion that the police officer who laid the information had any ulterior or improper motive. The applicant was committed for surrender to New Zealand.

Three points of interest should be made about this decision. First, the relevant procedure was a simplified backing of warrants procedure which operates between New Zealand and Australia. There was no requirement for a *prima facie* case. This is not the case in either Singapore[72] or Malaysia,[73] except where Malaysian fugitives are returned from Singapore.[74] Second, *R.* v. *Haji Said* might be sufficient ground for the court to extend the notion of triviality to the improbability of conviction in an exceptional case. Thirdly, the Commonwealth Law Ministers have recently amended the Commonwealth Scheme 1966. The words "under which the offence was committed" which followed "all the circumstances" were deleted as unnecessarily restrictive and a new paragraph was added after the passage of time provision: "or any other sufficient cause."[75] The adoption of this recommendation would provide future Daemars with a surer remedy.

B. *Malaysia*

The provisions of the Commonwealth Fugitives Criminals Act 1967 also resemble those of the Commonwealth Scheme but there are important differences.

[68] [1978] A.C. 247, 260 (H.L.); [1977] W.L.R. 862. See also *Kakis* v. *Government of the Republic of Cyprus* [1978] 1 W.L.R. 779.

[69] *Bryan* v. *Preston and Another* (1982-3) 44 A.L.R. 217; *Daemar* v. *Parker, supra*, n. 63; *Vyner* v. *Keeper of HM. Penitentiary at Malabar* (1975-76) 25 F.L.R. 9.

[70] *Daemar* v. *Parker, supra,* n. 63.

[71] *Daemar* v. *Parker idem.*

[72] S.24(6).

[73] Commonwealth Fugitive Criminals Act 1967, ss. 8(5), 11(5).

[74] S. 35.

[75] Clause 2, as amended at the Meeting of Commonwealth Law Ministers, Sri Lanka, 14-18 February, 1983; see Report, paras. 34-6.

(i) Section 1 of the Act appears to contemplate the prior conclusion of a binding arrangement or treaty before the Act can be applied to a Commonwealth country. This is unusual in intra-Commonwealth extradition and is presumably designed to ensure reciprocity. However, the 1977 provision for *ad hoc* extradition was also extended to the Commonwealth Fugitive Criminals Act.[76]

(ii) General restrictions on the return of fugitives include a new paragraph: if prosecution for the offence in respect of which his surrender is sought is, according to the law of the requesting country, barred by time. This provision was not recommended by the Commonwealth Scheme but is common in bilateral treaties. Contrary to the recommendations of the Scheme, there is no *autre fois* restriction.[77]

(iii) At the hearing the magistrate has the same jurisdiction and powers not as if it were a preliminary inquiry but as if the case were triable by him.[78] The magistrate is required to receive *any* evidence tendered by or on behalf of the fugitive:

(a) to show that he did not do or omit to do the act alleged to have been done or omitted by him;

(b) as to identity;

(c) as to whether the offence is an extraditable offence in relation to the country seeking surrender;

(d) as to the political offences exception;

(e) that the alleged act or omission does not constitute an offence under the law of Malaysia;

(f) to show that return is not in accordance with the provisions of the Act; or

(g) to show previous conviction or acquittal in Malaysia for the alleged act or omission.

The subsection does not limit the power of the magistrate to receive any other evidence from the fugitive. Evidence may be received with respect to paragraph (d) which is not otherwise legally admissible in a court of law.[79]

(iv) The standard of proof required of the requesting country is described as "a *prima facie* case."[80] The term was used in the Commonwealth Scheme but in the writer's opinion is unfortunate. The term is ambiguous as to the standard of proof intended. It has been used in this region to describe the evidence required in order to commit an accused person for trial in the High Court[81] and the evidence to be adduced by the prosecution before an accused can be said to have

[76] Fugitive Criminals (Special Extradition) Act 1977, s. 3.

[77] S.3(3)(M).

[78] S. 8(1) (M). This follows the words of the 1881 Act, s. 5.

[79] S. 8(2), (3), (4)(M). With the exception of para, (e), unnecessary in New Zealand legislation because of the definition of extradition crime therein, these provisions appear to have been taken from the New Zealand Extradition Act 1965, s. 9(1), (3). More generous to the fugitive than traditional English provisions, s. 9 has not persuaded New Zealand judges to permit extradition hearings to become first instance trials, but the possibility of freak injustice is further reduced.

[80] S. (5), (6)(M).

[81] *P.P.* v. *Ng Goh Weng & Anor.* [1979] 1 M.L.J. 127; *Re Osman bin Abdullah* (1954) M.L.J. 237.

a case to answer.[82] In the latter circumstance it means evidence such that a *reasonable* judge *could,* if he or she accepted the prosecution's evidence as true — and it follows that it must at least be capable of belief — be justified in convicting the accused, that is, in concluding that the accused was guilty beyond all reasonable doubt.[83] This is a reasonable interpretation of sections 180 and 190 of the Criminal Procedure Code (Malaysia) in which the test for a case to answer (evidence against the accused which if unrebutted would warrant his conviction) is given. The test for the committing magistrate in domestic proceedings is quite different.[84] The words used are "sufficient grounds" to commit the accused for trial. Surely the burden of proof at the preliminary hearing is intended to be of a lesser standard.

The term *"prima facie"* has also been used by judges interpreting the Extradition Ordinance 1958, section 10. In *Chita Han Mow* the Chief Justice of Malaya said:[85]

> An extradition proceeding is in the nature of a committal proceeding (see section 9(2) of the Extradition Ordinance); and a committal proceeding is not a trial: … the sole function of the committing magistrate is to adjudicate upon the question whether a *prima facie* case against the accused, that is to say, whether there is such evidence that, if uncontradicted at the trial, a reasonable jury properly directed could convict upon it. Where there is a doubt as to the weight or quality of the evidence the committing magistrate should refrain from assessing it but instead commit the accused and leave the duty of resolving the doubt to the trial court. See *Re Osman; Public Prosecutor v. Ng Goh Weng.*

The difference between the two standards may well be slight but the potential confusion in extradition proceedings is unnecessary. There are other details to cloud the issue. As a matter of history the standard of proof required for intra-Commonwealth extradition was higher than that demanded of foreign states.[86] In the Extradition Ordinance the magistrate has the same jurisdiction and powers "as if the prisoner were brought before him accused of an offence… triable by the Supreme Court."[87] In contrast, the Commonwealth Fugitives Act, section 8(1), uses the phrase "as if the case were one triable by him."[88] The reason for the distinction is probably historical. The Fugitive Offenders Act 1881, section 5, denned the magistrate's powers in the same way, but that definition might also be interpreted as consistent with a higher standard of proof. The specific right of the fugitive to adduce evidence of innocence is similarly ambiguous. A prisoner has the same right during a preliminary hearing but will certainly not have spoken when at the end of the prosecution case a judge must consider whether the accused has a case to answer.

[82] *Haw Tua Tau* v. P.P. [1981] 2 M.L.J. 49; and see [1981] 1 M.L.J. xxxiii; [1983] M.L.J. cxiii.

[83] P.P. v. *Omar Lopez* [1967] 2 M.L.J. 281; *Haw Tua Tau* v. P.P. *ibid.* This is also the position in English law: see Practice Note [1962] 1 All E.R. 448.

[84] Criminal Procedure Code, ss. 140-1 (M).

[85] [1980] 1 M.L.J. 219, 221. For other citations see *supra,* n. 81.

[86] *Armah* v. *Governor of Ghana & Anor.* [1968] A.C. 192.

[87] S.9(1)(M).

[88] See also Fugitive Offenders Act 1967, s.7(3) (U.K.), where similar wording has been used. However, the standard of proof in the English Act is expressly the same as that required for a committal for trial.

It is interesting to note that uncertainty as to the meaning of *"prima facie"* also arose in cases under the Indian Extradition Act 1962. It was agreed that the appropriate analogy was with the powers of a committing magistrate under sections 209 and 210 of the Indian Criminal Procedure Code. Sections 140 and 141 of the Malaysian Criminal Procedure Code contain essentially identical provisions. In *R.G. Ruia* v. *State of Bombay*[89] the Supreme Court held that in this respect the law in India was the same as the law in England. In a later case, Shelat J. summarised the effect of *Ruia* as follows:[90]

> This Court [in *Ruia]* added that in each case the Magistrate holding the preliminary enquiry has to be satisfied that a prima facie case is made out against the accused by the evidence of witnesses entitled to a reasonable degree of credit and if he is not so satisfied, he is not to commit. Where, however, much can be said on both the sides, it would be for the Sessions Court and not for the Magistrate to decide which of the two conflicting versions will find acceptance at its hands.... If there is no prima facie evidence or the evidence is totally unworthy of credit it is his duty to discharge the accused. But, if there is some evidence on which a conviction may reasonably be based he must commit the case.

Clearly, much will depend on the facts of each case. The evidence must be sufficient, for which purpose the magistrate may sometimes need to weigh the evidence adduced, but the extradition hearing must not take on the proportions of a trial. For this purpose there is no reason to distinguish between Commonwealth and foreign state proceedings. It is probable that the standard of proof in both Malaysian Acts was intended to be the same as that in domestic committal proceedings. However use of the term *"prima facie"* in the Commonwealth legislation may leave room for doubt.[91]

(v) When a fugitive has been committed, surrender is forbidden for fifteen days, but there is no provision that the magistrate is required to inform the fugitive of the writ of *habeas corpus* or like procedure. The Act does not expressly exclude *habeas corpus,* hence the writ is still available, but statutory silence about the fugitive's right to apply for it is a new, and perhaps unfortunate, development.

(vi) The final decision to surrender is again made by the Minister. It is submitted that section 9 must be read as subject to section 3. The Minister also has power to order the discharge of the fugitive at any time during the proceedings if it appears to the Minister that, by reason of:

(a) the trivial nature *of the case;* or

(b) the application for the surrender or return of a fugitive criminal not being made in good faith or in the interest of justice or being made for political reasons; or

[89] A.I.R. 1958 S.C. 97.

[90] A.I.R. 1970 S.C. 1015, 1018, See also Hingorani, *Modern International Law* (1979) 167-169.

[91] See *R.* v. *Governor of Brixton Prison ex p. Armah*, n. 86 *per* Lord Reid, 229-30: "What is it that the case shows *prima facie* or at first sight? Is it that on the evidence as it stands at the moment the accused would seem to be guilty or is it that the evidence contained allegations set out in such a way that further investigation is justified? I would hope, that a less ambiguous phrase will be used especially in any further legislation."

(c) for any other reason,

it is unjust or inexpedient to surrender or return the fugitive.[92]

This is an extremely broad discretion. There is no point at which the courts are required or permitted to consider these issues.

(vii) The Minister also has a discretion to refuse to surrender Malaysian citizens.[93] This was an optional clause in the Commonwealth Scheme 1966.

(viii) The Minister has *three* months in which to have the fugitive conveyed out of Malaysia.

(ix) The method of listing extradition offences is quite different. An "extradition offence" is defined in relation to any prescribed Commonwealth country as an offence specified in Schedule 1.[94] The Schedule is to be construed according to the law in force in Malaysia at the time of the alleged offence. The list is as follows:

1. Piracy
2. Treason (but see ss. 3(1), 8(2)(d) and 27(b). (Can treason ever be anything except a crime of a political character? Perhaps, if the motive is money, not principle).
3. Smuggling of gold, articles manufactured from gold, diamonds and other precious stones or of any narcotic substance.
4. Immoral traffic in women and girls.
5. Any offence which, if committed in Malaysia, would be punishable under any section of the appropriate Penal Code with imprisonment for a term of one year or more, or with death.
6. Any offence against any other section of the appropriate Penal Code or against any other law which may, from time to time, be specified by the Minister, by Order, either generally for all States or especially for one or more States.

V. EXTRADITION BETWEEN MALAYSIA AND SINGAPORE

Surrender from Singapore to Malaysia is governed by Part V of the Extradition Act 1968.[95] These provisions were based on those in the Australian Extradition (Commonwealth Countries) Act 1966 governing surrender of fugitives from Australia to New Zealand. Malaysia's provisions are more complex and must be considered separately.

A. *Singapore*

An offence for the purposes of Part V is a "seizable offence or an offence punishable on conviction with imprisonment for six months or more under the laws of Malaysia."[96] There is no requirement of double criminality.[97] No formal requisition is required. A Singapore magis-

92 S.27(M).
93 S.29(M).
94 S.2(M).
95 See also Criminal Procedure Code, s. 54.
96 S. 32(2)(S).
97 *General Fernandez* v. *Attorney-General, Malaysia* [1970] 1 M.L.J. 262. Refer to mirror provision in Malaysia, s. 10(2) (M).

trate, if satisfied that the offence is within section 32, simply endorses the duly authenticated Malaysian warrant which may then be executed in Singapore in the usual way. There is provision for a type of provisional warrant, issued by a magistrate upon "such evidence and under such circumstances as, in his opinion, justify the issue of the warrant."[98] The hearing is little more than an appearance. The only essential document is the duly authenticated Malaysian warrant, endorsed by a Singapore magistrate. A fugitive arrested on a provisional warrant will be released if this document is not produced within a reasonable time.[99] Return may be postponed for illness.[1] The magistrate may have to hear evidence on an application under a full "unjust or oppressive" clause.[2] There are no other general limitations. Review from any decision of the magistrate by either party is by application to the High Court and is in the form of a rehearing.[3] The final decision to surrender is made by the magistrate or the High Court, depending upon where the proceedings terminate. Surrender must take place within one month after the making of the surrender order.[4]

Fugitives returned to Singapore from Malaysia have no express speciality or other rights not enjoyed by criminal defendants generally.[5]

B. *Malaysia*

The Commonwealth Fugitive Criminals Act, section 10(1), implies that Part III of the Act applies to all offences against the laws of Singapore punishable on conviction with imprisonment for at least six months. The general procedure resembles ordinary intra-Commonwealth extradition rather than the mere backing of warrants. No formal requisition is required but a magistrate may not endorse a Singapore warrant for a non-seizable offence unless:

(a) the fugitive has failed to answer a court summons to appear for trial, the summons for appearance having been *personally* served on the fugitive in Malaysia not less than fourteen days before the hearing date; or

(b) the fugitive had entered into a recognizance for his appearance in court in Singapore and had failed to appear, or

(c) the fugitive had already appeared before a court in Singapore and then failed to appear for a scheduled adjournment.[6]

A Singapore warrant for the arrest of a *convicted* criminal may not be endorsed in Malaysia unless the purpose of arrest is to enable the fugitive to be brought before a court in Singapore to be sentenced with respect to the conviction or to take the fugitive to serve a sentence already imposed, not being imprisonment in default of paying a fine.[7]

There is provision for a provisional warrant if a police officer testifies on oath that:

[98] S. 34(S).
[99] S.35(4)(S).
[1] S.35(6)(S).
[2] S. 36(S).
[3] S.37(S).
[4] S.38(S).
[5] S. 39(S).
[6] S. 10(2) (M).
[7] S. 10(3) (M).

(a) he has reason to believe a relevant warrant has been issued in Singapore, and

(b) a Singapore police officer of the rank of inspector or higher requested the issue of the Malaysian warrant and

(c) that he has reason to believe the fugitive is in Malaysia.

If the Singapore warrant is not produced when the fugitive is brought before the magistrate, the fugitive may be remanded for not more than three days.[8]

The hearing is in the standard form. The fugitive may tender the same evidence as in an ordinary Commonwealth hearing with the words of "offence under military law which is not also an offence under the general criminal law" being added to paragraph (d).[9] The *prima facie* case requirement is maintained but special evidentiary provisions are included.[10] Review is by way of *habeas corpus.*[11] Surrender is delayed by fifteen days to permit the fugitive to apply. The final surrender decision is made by the Minister. The section 27 (unjust or oppressive) and section 29 (discretionary nonsurrender of nationals) provisions apply.

Finally there is the standard provision that if not returned within one month from the date of committal or the termination of *habeas corpus* proceedings, whichever is the later, the fugitive may be released unless cause is shown to the contrary.

It is difficult to see that this procedure would be markedly more expeditious than ordinary Commonwealth extradition. The passage of fugitives across the causeway would seem to be very much faster from Singapore to Malaysia than in the opposite direction. Unfortunately, it has not been possible to discover if this is in fact so.

One recent related development should be noted. The *Sunday Times* of 22 January 1984 reported that the Singapore Government intended to extend the backing of warrants procedure to the new state of Brunei. The report noted that reciprocal legislation had been introduced in Brunei.[12] This revives a relationship that was first established by the United Kingdom in 1918. If Malaysia does likewise, the three Commonwealth nations in the region would again be served by a simple and efficient extradition procedure.[13]

VI. CONCLUSIONS

Major departures from established procedures have been inhibited by desires for continuity with the past and compatibility with the present. Even so, Malaysia had introduced a significant innovation in the form of *ad hoc* extradition. The resulting liberation from the confines of antiquated treaties should be invigorating. Singapore's rationalisation of its extradition laws is also encouraging.

[8] S. 13(M).
[9] S. 11(M).
[10] S. I2(M).
[11] Ss. 11(4) and 16(M).
[12] Criminal Procedure Code, s. 54, amended to extend to Brunei. Criminal Procedure Code (Amendment) Act 1984, s. 2.
[13] Refer Commonwealth Fugitives Amendment Act 1984 (Brunei); at the time of writing not yet in force.

However, there is need to sound a cautionary note. It was suggested earlier that the notion of balance was central to the modern extradition process: balance between the interests of individuals and the interests of states; balance between the power of the executive, the legislature and the judiciary. Changes which directly effect arrangements with foreign states have necessarily been minimal, but where changes are possible, and have indeed occurred, is in internal extradition procedure. There has been a quite discernible shift in the balance of power away from the legislature and towards the executive. This in itself may not be undesirable, but the potential consequences for the fugitive are serious if the increase in the power of the executive is not accompanied by vigilant caution on the part of the judiciary. It is for this reason that the unwillingness of the lower court in *Chua Han Mow's* case to stand by the fugitive's interests is particularly disturbing and should be firmly checked. If the judiciary abdicate their responsibility the danger of individuals being sacrificed for political expediency is greatly increased. It is encouraging to note that the lower court's attitude was repudiated by the Federal Court.

In this context one difference between the Singapore provision and those of Malaysia and the United Kingdom which deserves further mention is the lack of any possibility in Singapore of appeal from the court's decision on a *habeas corpus* application. The wisdom of the Court of Appeal could prove valuable to a fugitive, faced with a passively-minded judge, or a requesting state faced with an obstructive one. If there had not been an avenue for appeal in the *Chua Han Mow* case, the lower court's interpretation of the balance of responsibility might have prevailed against and thwarted many deserving fugitives. An opportunity to apply for leave to appeal to the House of Lords in England has not caused inordinate difficulty or delay and has enabled that House to correct a number of long standing misinterpretations of the United Kingdom provisions.

Finally, a plea for some assistance for both practitioner and government servant. Extradition relations with foreign states are essentially treaty based in both states. *Ad hoc* extradition can only ever be a temporary expedient or an emergency measure. Certainty will only be achieved when a comprehensive and up to date network of treaties has been devised or the treaty system has been abandoned altogether in favour of a system of designation similar to that currently used in Singapore for Commonwealth extradition. The merits of designation cannot be discussed in this article [14] but even if the treaty prerequisite is retained much can still be done. A good starting point would be a readily accessible list of treaties currently in force. A tentative list has been included as an appendix to this article but it is by no means certain that these lists are complete. A comprehensive search is required. Savings in future efficiency would surely more than justify any present effort expended.

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[14] See Shearer, "Extradition Without Treaty" (1975) 49 Aust. LJ. 116.

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APPENDIX 1.

Current Extradition Arrangements.

Singapore *

I. Foreign States.

Austria	431/36
Bolivia	1000/1898
Chile	752/1898
Denmark	G.N. 2193/36
Germany, Federal Republic of	s. 237/60
Hungary	G.N. 3097/37
Iraq	G.N. 1380/33
Israel	s. 238/60
Italy	752/1898
Luxembourg	G.N. 251/51
Pakistan	s. 52/69
Panama	G.N. 6150/38
Peru	G.N. 2850/35
Poland	1155/34
Portugal	G.N. 1701/33
Switzerland	G.N. 432/36
United States of America	G.N. 430/36

II. Commonwealth Countries.

Aden	s. 237/60
Antigua	s. 237/60
Australia	s. 52/69
Bahamas	s. 248/71
Barbados	s. 52/69
Bermuda	s. 74/69
Botswana	s. 52/69
British Guiana	s. 237/60
British Honduras [1]	s. 248/71
British Indian Ocean Territory	s. 248/71
British Solomon Islands	s. 248/71
Canada	s. 52/69
Cayman Islands	s. 237/60
Ceylon	s. 52/69
Cyprus	s. 52/69
Dominica	s. 237/60
Falkland Islands	s. 74/69
Fiji	. 74/69

* Compiled by the library of the Attorney General's Chambers, Singapore,
[1] This is now the independent state of Belize.

Gambia	s. 52/69
Ghana	s. 52/69
Gibraltar	s. 74/69
Gilbert and Ellice Islands [2]	s. 74/69
Granada	s. 237/60
Guyana	s. 52/69
Hongkong	s. 74/69
India	s. 52/69
Jamaica	s. 52/69
Kenya	s. 52/69
Lesotho	s. 52/69
Malawi	s. 52/69
Malta	s. 52/69
Mauritius	s. 52/69
Monserrat	s. 237/60
New Hebrides	s. 74/69
New Zealand	s. 52/69
Nigeria	s. 52/69
Papua New Guinea	s. 202/76
Pitcairn Islands	s. 74/69
Seychelles	s. 248/71
Sierra Leone	s. 52/69
St. Christopher, Nevis and Anguilla	s. 237/60
St. Helena and dependencies	s. 74/69
Tanzania	s. 52/69
Tonga, Kingdom of	s. 290/77
Trinidad and Tobago	s. 52/69
Turks and Caicos Islands	s. 237/60
Uganda	s. 52/69
United Kingdom, Channel Islands, Isle of Man	s. 52/69
Virgin Islands	s. 248/71
Zambia	s. 52/69
Zimbabwe	s. 237/60

Please note that a special backing of warrants procedure is in operation between Singapore, on the one part, and the Federation of Malaysia or Brunei Darusalam on the other part. See the Extradition Act 1968, Part V and the Criminal Procedure Code s. 54 as amended in 1984.

[2] These islands now comprise the independent states of Tuvalu and Kiribati.

APPENDIX 2.

Current Extradition Arrangements

Malaysia *

I. *Extradition Treaties Currently in Force, s. 3, Extradition Ordinance, 1958*

1. Extradition (Thailand) Older, 1960: L.N. 305/60 [A confirmation of the Treaty between Great Britain and Thailand dated 4.3.1911]
2. Extradition (Republic of Indonesia) Order, 1975: P.U.(A) 286/75.
3. Instrument of Ratification of Extradition Treaty between Malaysia and India signed on 21st January 1979 — this information was obtained from Wisma Putra (i.e. Ministry of Foreign Affairs) and was not gazetted.

II. *Treaties/Orders made under F.M.S. Extradition Enactment: 26/1914 (in chronological order)*

1. G.N. no. 1970/19: Order made by the Chief Secretary... applying the Enactment to France.
2. G.N. no. 3938/19: Order made by the Chief Secretary... applying the Enactment to Denmark.
3. G.N. no. 2429/20: Order made by the Chief Secretary ... applying the Enactment to Spain.
4. G.N. no. 2158/21: Order made by the Chief Secretary .. . applying the Enactment to Netherlands.
5. G.N. no. 2159/21: Order made by the Chief Secretary... applying the Enactment to Switzerland.
6. G.N. no. 6121/21: Order made by the Chief Secretary... applying the Enactment to Portugal.
7. G.N. no. 4999/21: Order made by the Chief Secretary . . . applying the Enactment to Finland.
8. G.N. no. 1404/28: Order made by the Chief Secretary. . applying the Enactment to Latvia.
9. G.N. no. 2320/28: Order made by the Chief Secretary... applying the Enactment to Estonia.
10. G.N. no. 3528/28: Order made by the Chief Secretary ... applying the Enactment to Czechoslovakia.
11. G.N. no. 321/29 : Order made by the Chief Secretary... applying the Enactment to Albania.

* Compiled by the staff of the Law Library, University of Malaya, Kuala Lumpur, Malaysia.

12. G.N. no. 1421/34: Amendment of G.N. no. 6121 of 16.12.1921... Extradition Treaty between Gt. Britain and Portugal.

13. G.N. no. 1422/34: Addition of... crimes to Extradition Enactment, 1914 [amendment of the second schedule]

14. G.N. no. 4235/34: Order made by the Chief Secretary... to Greece.

15. G.N. no. 4236/34: Order made by the Chief Secretary ... to Iraq.

16. G.N. no. 4237/34: Order made by the Chief Secretary .. . to Lithuania.

17. G.N. no. 4217/35: Order made by the Chief Secretary... to Hayti.

18. G.N. no. 2418/35: Order made by the Chief Secretary .. to Hungary.

19. G.N. no. 2419/35: Order made by the Chief Secretary .. to Salvador.

20. G.N. no. 2844/35: Order made by the Chief Secretary... to Austria.

21. G.N. no. 2845/35: Order made by the Chief Secretary ... to Bolivia.

22. G.N. no. 2846/35: Order made by the Chief Secretary ... to Columbia.

23. G.N. no. 2847/35: Order made by the Chief Secretary ... to Guatemala.

24. G.N. no. 2848/35: Order made by the Chief Secretary ... to Monaco.

25. G.N. no. 2849/35: Order made by the Chief Secretary... to Nicaragua.

26. G.N. no. 2850/35: Order made by the Chief Secretary... to Peru.

27. G.N. no. 2851/35: Order made by the Chief Secretary ... to Poland.

28. G.N. no. 2852/35: Order made by the Chief Secretary ... to Romania.

39. G.N. no. 4358/35: Order made by the Chief Secretary ... to Belgium.

30 G.N. no. 4359/35: Order made by the Chief Secretary .. to Cuba.

31. G.N. no. 3070/36: Order made by the Chief Secretary... to Paraguay.

32. G.N. no. 3739/36: Amendment to Treaty with Denmark.

33. G.N. no. 2698/38: Modification of Arrangement with Denmark.

34. G.N. no. 2699/38: Modification of Arrangement with Hungary.

35. G.N. no. 2700/38: Modification of Arrangement with Switzerland.

36. G.N. no. 6148/38: Order made by the Chief Secretary ... to Chile.

37. G.N. no. 6149/38: Order made by the Chief Secretary... to Luxembourg.

38. G.N. no. 6150/38: Order made by the Chief Secretary... to Panama.

39. G.N. no. 608/39 : Order made by the Chief Secretary... to Ecuador.

40. G.N. no. 399/40 : Order made by the Chief Secretary ... to United States of America.

41. G.N. no. 400/40 : Notification of Arrangement with Iceland.

III. *Current Orders under s. 30(1), Commonwealth Fugitive Criminals Act, 1967*

1. Commonwealth Fugitive Criminals (Prescribed Forms) Rules 1981: PU(A) 407/81.

Please also note that the Commonwealth Fugitive Amendment Act, 1984 was just passed on 18th July, 1984 to include Brunei. (Not gazetted yet).