BOOK REVIEWS

The Law of Extradition and Mutual Assistance – International Criminal Law: Practice and Procedure by **Clive Nicholls QC, Clare Montgomery QC** and **Julian B Knowles** [2002, Cameron May, London, 872 pages + Appendices and Index]

This compendious work on the law and practice of extradition and mutual assistance in criminal matters in the United Kingdom is greatly to be welcomed. As Lord Bingham says in his foreword, judges and practitioners, who have long waited for an authoritative exposition of this increasingly complex and detailed body of law, "need sigh (with Job) no longer. The book is at hand."

Two of the authors will be well known to Australian lawyers as counsel in *Pinochet* (1998-2000) and many other extradition cases of recent times. They have unrivalled practical experience in international criminal law. In an essentially expository, but not uncritical, manner the authors cover the governing law as it presently applies in the United Kingdom, mainly under the 1989 Extradition Act. The second half of the volume contains documentary material: the relevant United Kingdom acts and statutory instruments, and the European and Commonwealth international instruments.

Extradition law and practice in Australia and the United Kingdom were substantially identical until the passage of the 1988 Extradition Act in Australia and the 1989 Act in the United Kingdom. Even now there are many similarities, which make this book relevant to Australian courts and practitioners. However, there are differences stemming mainly from the United Kingdom's membership of the European Union and from the enactment of the 1998 Human Rights Act (c 42). Australia enjoys no comparable organic relationship with any other political entity, nor does it have a bill of rights.

The authors note in their introduction that *Pinochet*[1] served to draw

[1] R v Metropolitan Stipendiary Magistrate; ex parte Pinochet Ugarte (No 1) [2000] 1 Appeal Cases 61; (No 2) [2000] 1 Appeal Cases 119; (No 3) [2000] 1 Appeal Cases 147 in which the Government of Spain sought the extradition of the former president of Chile to face charges of murder and torture allegedly committed against Spanish

public attention to the institution and laws of extradition and to highlight three supposed defects: the lengthiness of extradition proceedings, the interplay of executive and judicial functions which often serve to contribute to delay, and the general complexity of the law. The authors continue with the following striking statement:[2]

> As a result, the Government, through the Home Office, produced in March 2001, a consultation paper making proposals for a reform of extradition law, posing questions and inviting comment from the general public as well as people with a professional and campaigning interest. The changes proposed by the paper are far-reaching, and in our opinion, very troubling. Although they would certainly achieve the Government's desired aim of speeding up extradition, they would do so at the expense of justice and fairness.

There is a parallel here with the Australian experience. In response to the failed proceedings to secure the extradition of Robert Trimbole from Ireland, amendments to the law were hurriedly enacted by the Australian Parliament which enabled effect to be given to a new style of extradition treaty: the "no-evidence" treaty. It has been argued by the present reviewer on a number of occasions that the abolition of the requirement that evidence of guilt be presented by the requesting state to Australia raises fundamental issues of justice and fairness.

It may well be that there is a case for dispensing with evidence of guilt where the requesting state is a party to the European Convention on Extradition, and the United Kingdom and the requesting state are both subject to the 1950 European Convention on Human Rights[3] and the jurisdiction of the European Court of Human Rights. These considerations, protecting the rights of United Kingdom citizens whose extradition is requested by a fellow member state of the European Union, have no counterpart at all in the case of Australia, where under the present Australian law an Australian citizen may be sent back to a foreign country on the mere say-so of that country, without any

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citizens resident in Chile during his period of office. At the time the extradition request was received by the United Kingdom, General Pinochet was no longer president and was on a private visit to Britain.

[2] Introduction at xvii.

[3] The Convention has five protocols – one in 1952, three in 1963 and one in 1966.

opportunity to contest the strength of the allegations before an Australian court. This feature of modern Australian extradition law pays no regard to the similarity of institutions or legal traditions of the requesting state with those of Australia.

By contrast to the abolition of the requirement of the presentation of evidence of guilt in the case of foreign countries, the requirement has been retained under Australian law in the case of Commonwealth countries (with the exception of New Zealand, with which special arrangements exist – somewhat by way of analogy to the special arrangements between the United Kingdom and the Republic of Ireland). This is because there has been no desire by other Commonwealth countries to amend the reciprocal non-treaty Commonwealth Scheme, although pressed to follow its lead on a number of occasions by Australia. As a consequence an Australian citizen accused of offences in France, Peru, the Philippines or Venezuela has much less protection against unjustified surrender than to Canada, India, South Africa, or the United Kingdom. It is impossible to justify such an anomaly.

The amendments foreshadowed above were given added impetus by the terrorist attacks in the United States of 11 September 2001. The United Kingdom Government announced that further measures would be included in the draft legislation to facilitate the speedy extradition of persons accused of terrorist offences. Thus far, no special procedures for the extradition of terrorists have been proposed in Australia.

The amendments to the law envisaged by these proposals had not been enacted in the United Kingdom at the time the book went to press. The authors propose to cover the new legislation in a supplement to the book to be published at a later date.

Part I of the expository part of the book is divided into chapters charting the stages of extradition procedure. A short history of extradition law in relation to foreign countries and Commonwealth countries (which used to be dealt with under separate legislation, as was the case under Australian law also) is followed by an outline of the jurisdictional scope of the 1989 Extradition Act. Subsequent chapters deal with liability to extradition, the definition of extradition crimes, the preliminary stages of dealing with extradition requests, and the

conduct of committal proceedings before a magistrate in the United Kingdom following a request for extradition by another country. An important chapter is devoted to restrictions on return, established under the Act and the applicable treaties, including the prohibition of the extradition of political offenders and of those likely, if returned, to suffer prejudice or discrimination on grounds of race, religion, nationality or political opinion. A very likely future amendment of the law in both the United Kingdom and Australia will abolish the political offence exception in relation to terrorism so as to align it with the comprehensive definition of terrorism presently under elaboration at the United Nations. Already, substantial inroads have been made into the exception in relation to terrorist-related offences under Australian law and under UK law (the latter in part implementing the United Kingdom's obligations under the 1977 European Convention for the Suppression of Terrorism).

Successive chapters are devoted to the application of the specialty rule (under which a person may not be prosecuted for offences other than those for which extradition was granted), appeals, procedures at the final stage of return, special provisions relating to the Republic of Ireland, and return to the United Kingdom from other countries.

A separate chapter discusses the relationship between extradition and the 1950 European Convention on Human Rights, and there is a discussion of the jurisprudence of the European Court of Human Rights on extradition matters. It is likely, since the incorporation of the Convention into United Kingdom domestic law through the 1998 Human Rights Act (which entered into force in 2000), that more objections to extradition will be based on human rights considerations arising under the Act. Particular concerns may arise in relation to the possibility that, if extradited, a fugitive may be tortured, or may be subjected to the death penalty, notwithstanding the giving of assurances by the requesting country.[4]

The final chapter of this part outlines extradition from the United Kingdom to the *ad hoc* Criminal Tribunals for the Former Yugoslavia

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[4] Launder v United Kingdom, European Court of Human Rights, Application No 27279/95; see also R v Secretary of State for the Home Department; ex parte Launder [1997] 1 Weekly Law Reports 839; [1998] Queens Bench 944.

and Rwanda, and to the newly established International Criminal Court.

Part II of the book deals with mutual assistance in criminal matters, which is an increasingly important aspect of international cooperation in the suppression of crime. The chapters of this part cover service of process, the provision of evidence in the United Kingdom for use in trials elsewhere, and vice versa, the transfer of prisoners for the purpose of giving evidence or assisting investigations, and mutual assistance in the restraint and confiscation of the proceeds of crime.

The authors are at all times clear and methodical in their treatment. There is an excellent index and table of cases.

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