

INTERNATIONAL ACTION AGAINST DRUG TRAFFICKING: TRENDS IN UNITED KINGDOM LAW AND PRACTICE THROUGHOUT THE 1980s

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1. INTRODUCTION AND RECOMMENDATIONS

During the 1980s the issue of how best to combat the illicit traffic in narcotic drugs and psychotropic substances has come to occupy a central position in the international political agenda. That it has done so is not merely a result of the escalating nature of the problem but is also a reflection of an enhanced understanding of its negative social impact, its implications for domestic political stability and its distortive effects on economies. Indeed, it is clear from recent events in Central America that, in extreme circumstances, the drugs trade can indirectly threaten the maintenance of international peace and security itself. Similarly, while the practical issues present themselves in radically different fashions in and among source, transit and consumer countries the drugs trade is now universally recognised as a global problem affecting in a significant way developed and developing countries alike. Given this fact, major emphasis in recent years has been placed on the need to improve the effectiveness and extend the scope of international co-operation in this area.

In reiterating their concern over drug abuse and illicit trafficking at Kuala Lumpur in October 1989 Commonwealth Heads of Government stressed that "the Commonwealth should take the lead in promoting more effective national and international action on a number of key fronts". These included, among others, action against drug trafficking and money laundering, "including provisions for the confiscation of the illicit assets of convicted drug traffickers", the implementation of the Commonwealth Scheme for Mutual Assistance in Criminal Matters, and securing the efficient extradition of fugitive offenders. This paper attempts to provide an overview of the initiatives taken by the United Kingdom throughout the 1980's to meet these and related goals.

The changes brought about in British law and practice have, as will be seen, been extremely wide-ranging. Many have required the enactment of detailed and complex legislation which, even with a broad measure of cross-party support, have placed considerable demands on Parliamentary time. The result has been, however, a radical transformation in the ability of the United Kingdom to co-operate with other countries in combating international crime.

Although much of value can be learned from the British experience, sight should not be lost of the fact that a growing number of other Commonwealth countries from a wide variety of geographic areas, and representing the varied socio-economic character of its membership, have also taken significant initiatives in many of the areas discussed here. Though lying beyond the scope of this study, it should not be forgotten that such law and practice constitutes an invaluable source of information and experience for officials, policy makers and legislators to draw on in the future when directing their attention to the needs of effective international co-operation.

It should also be stressed that all of the areas covered in this paper in which the United Kingdom has taken action in the course of the last decade are now addressed in the 1988 UN Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic

Substances. At Kuala Lumpur Commonwealth Heads of Government "urged all members of the international community to accord priority to its early ratification and implementation". The Bahamas and Nigeria are amongst those who have already taken this step. Many other Commonwealth countries have signed the Convention and some, such as the United Kingdom, are actively paving the way for early ratification. Though a highly complex international instrument which will require extensive implementing legislation by most, if not all, states which decide to become bound by it, it does constitute an obvious common focus for future governmental discussion of action to be taken against drug traffickers.

Given the above, and in the light of the study which follows, there are a number of practical matters which might be considered within a Commonwealth context including:

- (i) the desirability of enhancing the flow of information between Commonwealth members on developments in domestic legislation, case law, and the conclusion of international treaties, agreements and arrangements so that full advantage can be taken of, and lessons learned from, that experience;
- (ii) the need for a detailed practical guide to the 1988 U.N. Convention to facilitate its consideration by governments and its early and effective entry into force. Given the diverse membership of the Commonwealth and the nature of the 1988 Convention any such guide should cover the full range of possibilities from the minimum action required to the maximum action permitted under its terms;
- (iii) the possible need of some members for practical expert assistance in drafting the complex legislation which will often be required in order to give appropriate effect to the obligations and rights which flow from participation in the Convention regime; and
- (iv) the possible need of some members for practical expert assistance in the negotiation of bilateral and regional treaties, agreements and arrangements relevant to the fight against the illicit trade in narcotic drugs and psychotropic substances.

2. THE CONTEXT

In recent years the problems associated with the illicit use and misuse of narcotic drugs and psychotropic substances have assumed greater political and social prominence in the United Kingdom than ever before. This results, in part, from the fact that the scale of the problem has increased significantly throughout the 1980s. All of the admittedly imperfect statistical indicators, including the volume of drugs seized, the numbers of persons convicted or cautioned for drug offences, and the number of drug 'addicts' notified to the government by medical practitioners, tell the same disturbing story¹. In addition, "[t]here is evidence that drug misuse has become more pervasive. In the 1960s it tended to be associated with an alternative youth sub-culture, mainly centred in London, or - in the case of cocaine - with people in the higher socio-economic brackets. But drug misuse is now encountered in all social classes and in all parts of the country"².

Not only has illicit drug use in the United Kingdom expanded in scope it has also started to change in nature. In 1985 the House of Commons Home Affairs Committee, troubled by the pattern of cocaine abuse in the United States, expressed the fear that "unless immediate and effective action is taken Britain and Europe stand to inherit the American drug problem in less than five years. We see this as the most serious peace-time threat to our national well-being"³. In spite of this warning, and subsequent governmental action, the Home Office in early 1989 confirmed that "the perceived threat from cocaine has materialised"⁴. As the Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs was to inform Parliament on 11 January 1989:

"There is, unfortunately, a considerable amount of evidence that the drugs cartels have targeted the whole of Europe for an increase in the export of cocaine, especially from Latin America. Also, because of the difference between the wholesale price of cocaine in London and in the United States, there is an increasing trend towards exporting refined cocaine directly from the United States to the United Kingdom and elsewhere in Europe"⁵.

A further factor, worthy of note at this stage, is that "[d]rug-related mortality is in the process of being disastrously inflated by the advent of the Acquired Immune Deficiency Syndrome (AIDS)"⁶. Research has demonstrated that this results from the practice followed by intravenous drug users in certain parts of the country, and particularly in Scotland, of sharing infected equipment⁷. As Plant has recently noted: "Most of the infected drug users are young, sexually active and heterosexual. Some are working prostitutes. The possible implications of this development for public health are extremely grave and threaten to dwarf those of illegal drug use itself"⁸.

In the face of this ever growing threat the British Government has evolved a comprehensive strategy⁹ which affords full recognition to the global nature of the problem¹⁰ and the consequent need for international co-operation¹¹. As the Home Office, which has the lead departmental responsibility for combating drug misuse,¹² recently stated in a report to a Parliamentary Committee: "A very high proportion of the drugs misused in this country are illegally imported. Support for international action to curb illicit drug production and trafficking is therefore a key element in the Government's strategy against drug trafficking and abuse"¹³.

The global dimension to British policy has been evident for some years through, for example, its commitment to the Single Convention on Narcotic Drugs, as amended by the 1972 Protocol¹⁴. As has been pointed out elsewhere this "provides for international controls over the production and availability of opium and its derivatives, synthetic drugs having similar effects, cocaine and cannabis"¹⁵. However, as a consequence of a number of reservations as to the efficacy of the 1971 United Nations Convention on Psychotropic Substances,¹⁶ which extends the concept of international control to a wide range of synthetic drugs,¹⁷ the United Kingdom initially refrained from ratifying it. However, in the mid 1980s the position was re-examined and the conclusion was reached that "these reservations are outweighed by the value of the Convention in combating drug misuse, and in promoting international co-operation"¹⁸. The UK took the necessary steps to secure full participation in 1986¹⁹. The British Government has also given its full support to new multilateral initiatives. It was an active participant in the June 1987 International Conference on Drug Abuse and Illicit Trafficking,²⁰ and was one of the first signatories of the 19 December 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances²¹. Similarly, the Government has actively encouraged European regional co-operation through, for example, its participation in the Council of Europe's "Pompidou Group"²².

Significant though the above initiatives have been, bilateral co-operation continues to play the central role in British policy. It is in this sphere that the most dramatic strides in international co-operation have been secured and on which the principal burden is likely to fall in the future. It is, thus, to some of the more significant developments relevant to this area that this study now turns.

3. EXTRADITION

Extradition has been and seems likely to continue to be the major mechanism through which the United Kingdom co-operates with other states in criminal matters including drug trafficking²³. In addition, the procedure of extradition lies at the heart of the enforcement system provided in the Single Convention on Narcotic Drugs, as amended,²⁴ and the Convention on Psychotropic Substances²⁵ and continues to occupy an important place in the more ambitious structure provided for in the 1988 United Nations Convention²⁶.

In the United Kingdom the subject of extradition has been governed by a number of statutes of which the most important, and the most antiquated, has been the Extradition Act, 1870²⁷. For a number of years there has been concern in governmental circles that the law concerning extradition to foreign states was both outdated and overly stringent; that the legislative scheme was incapable of dealing with "a substantial expansion in international crime, such as drug trafficking"²⁸.

For these and other reasons the issue was remitted to an Interdepartmental Working Party which reported in 1982²⁹. The radical reforms envisaged by that study were, in turn, subject to further examination and consultation in the context of a 1985 Green Paper³⁰. Finally the Government signified its agreement to seek wholesale change through legislation in the Criminal Justice White Paper of 1986³¹.

Following a lengthy Parliamentary passage, due in part to the intervening British general election of 1987, the Criminal Justice Act received the Royal Assent on 29 July 1988. As expected this Act³² paved the way for the introduction of profound changes in the law of extradition which are outlined, in brief, below. However, subsequent to the enactment of this statute, and prior to the entry into force of the relevant provisions, the decision was taken to consolidate the many Acts dealing with extradition to foreign states and to Commonwealth jurisdictions, the latter being governed by the Fugitive Offenders Act, 1967³³. Following the Report on the Consolidation of Legislation Relating to Extradition, prepared by the Law Commission and the Scottish Law Commission,³⁴ Parliament swiftly passed the Extradition Act 1989³⁵ which entered into force on 27 September of the same year³⁶.

From what has been said above it will come as no surprise to learn that the reforms thus brought about in United Kingdom law are far from straightforward. In particular, the system provided by the Extradition Act, 1870, as amended, has not been entirely abandoned and will continue to govern proceedings with foreign states with which the UK enjoys extradition treaties until such time as new agreements are concluded with them³⁷. It should also be noted that the 1989 Act does not address the subject of the return of offenders as between the United Kingdom and the Republic of Ireland which remains governed by the simplified procedure provided for in the Backing of Warrants (Republic of Ireland) Act 1965³⁸.

The 1989 British legislation brings into effect a number of major changes which will impact on the ability of the United Kingdom to extradite persons sought by third states for drug related offences. The first such important innovation relates to ad hoc extradition. In international law it is accepted that a State has no duty to extradite in the absence of a treaty³⁹. However, it is equally clear that there is no customary international law rule to preclude extradition where no treaty subsists between the requesting and requested state and many civil law countries provide such a facility⁴⁰. By way of contrast, British law has traditionally contained no legal authority to extradite to a foreign state in the absence of such a treaty⁴¹. The United Kingdom currently enjoys formal bilateral extradition relationships with just over 40 foreign states including the United States⁴². In recent years the Government has continued to

actively pursue negotiations and, in 1986, a new general extradition treaty was concluded with Spain⁴³ as well as a Supplementary Treaty with the US⁴⁴. This leaves, however, in excess of 60 states with which Britain has no general extradition arrangements⁴⁵. In the course of the review, it was concluded that provision should be made to permit extradition even in the absence of a treaty. This facility is commonly described as ad hoc extradition. As the Earl of Caithness stated in the House of Lords on 20 October 1987:

"It remains our policy to maintain treaties as the normal basis for extradition but we believe that ad hoc extradition might be a useful supplement to our present arrangements"⁴⁶.

The principal argument in favour of this change is the administrative convenience which it offers. Furthermore, the Government believes that while treaties help to ensure reciprocity the UK should not regard reciprocity in the extradition field as necessary in all circumstances. Finally, it is pointed out that arrangements with the Commonwealth are based, not on treaties, but on substantially uniform legislation among its members⁴⁷.

The Extradition Act 1989 thus empowers the Secretary of State to make special extradition arrangements for particular cases with states with which there are no general extradition arrangements⁴⁸. In such cases the statutory safeguards for the fugitive apply in the same manner as they would to extradition pursuant to a "general extradition arrangement" or treaty⁴⁹. Following the recommendations of the working party there is no specified requirement as to reciprocity.

A second major departure from tradition concerns the prima facie case requirement. Under the 1870 Act the requesting state was obliged to provide the Courts with adequate evidence of the conviction or guilt of the individual in question before extradition could take place. In so far as the former is concerned the only major problem which has arisen in practice concerns those cases in which the individual was convicted in absentia. In this context the Government concluded that the law afforded inadequate safeguards. Consequently the Act provides that an individual "shall not" be returned if it appears to either the Secretary of State or the Courts that: (a) the conviction was obtained in his absence; and (b) it would not be in the interests of justice to return him on the grounds of that conviction⁵⁰.

Considerable difficulties did, however, arise in cases where the individual had been accused but not yet convicted of a criminal offence. In these circumstances section 10 of the 1870 Act required the foreign state to produce evidence which in English law would be sufficient "to justify the committal for trial of the prisoner if the crime of which he is accused had been committed in England" This is what is known as the prima facie case requirement. The need to satisfy this requirement has been the source of considerable dissatisfaction among foreign states and particularly those in Western Europe. As the 1985 Green Paper noted:

"Something like a third of applications made to the United Kingdom fail, often because of the inability of the requesting state to satisfy the prima facie case requirement. Furthermore there are occasions on which some states are deterred from making a request at all because they believe it will be too difficult to meet the requirement"⁵¹.

Eventually the Government decided that it should in principle be for the requesting state to judge the sufficiency of the evidence for a trial of the fugitive. Thus, in the Criminal Justice White Paper the intention to abolish the requirement was announced⁵². In arriving at this controversial decision the Government was seemingly persuaded by the view that other elements in British extradition law, such as double criminality, speciality and the political safeguard, would ensure "that a fugitive is not surrendered in circumstances where this would be manifestly unjust or oppressive"⁵³.

However, when the Criminal Justice Bill was first presented to Parliament a somewhat less far reaching scheme was envisaged apparently as a result of further consideration of British-American relations. This made provision for the progressive abolition of the prima facie requirement, by Order in Council, on a state by state basis. Even in this form, however, the proposal attracted considerable opposition in Parliament. There it was characterised as extradition on demand and as the elimination of an important and long established protection for the individual. In short, it was widely regarded as going too far in changing the balance of law against the defendant⁵⁴.

In the face of this opposition, particularly in the House of Lords, the Government made a number of concessions. First, it indicated that it would, in practice, take steps to abolish the requirement only in the context of the relationships with Western European states and parties to the 1957 European Convention on Extradition which the UK now intends to ratify⁵⁵. Second, the Government accepted an amendment whereby all Orders in Council which seek to dispense with the prima facie rule "shall be subject to annulment in pursuance of a resolution of either House of Parliament"⁵⁶.

Thus, under the 1989 Act a state requesting the return of an individual accused of an offence under a general extradition arrangement must satisfy the Court, unless an Order in Council otherwise provides, "that the evidence would be sufficient to warrant his trial if the extradition crime had taken place within the jurisdiction of the Court"⁵⁷. The requirement also remains in all cases of ad hoc extradition⁵⁸. In addition, the traditional prima facie case requirement continues to govern proceedings brought under the 1870 Act procedures and in respect of Commonwealth countries⁵⁹.

Finally, a number of improvements have been obtained which should permit the fugitive to make more effective use of his right to make representations to the Secretary of State against his return, and to seek judicial review of any order by the Secretary of State authorising his return⁶⁰.

Another consequence of the 1989 Act is to expand significantly the range of offences which attract extradition. This has been accomplished primarily through the abandonment of the system of specifically listing offences which are extradictable in UK law⁶¹. It has been decided to substitute this with a "no list" or "eliminative" method which defines extradictable offences in terms of severity of punishment. This is the procedure favoured by many civil law jurisdictions and the one which is used in the European Convention of 1957⁶². The Act defines an extradition crime as:

"conduct in the territory of a foreign state, a designated Commonwealth country or a colony which, if it occurred in the United Kingdom, would constitute an offence punishable with imprisonment for a term of 12 months, or any greater punishment, and which, however described in the law of the foreign state, Commonwealth country or colony is so punishable under that law"⁶³.

For these purposes the law of the UK "includes the law of any part of the United Kingdom"⁶⁴. At the Commonwealth Law Ministers' Meeting in Harare in 1986 the British Government sought and obtained agreement to the use of the eliminative method in the Commonwealth scheme and the Act makes appropriate provision to this end⁶⁵.

Under the new system all common law offences and a substantial number of additional statutory offences will become appropriate vehicles for extradition⁶⁶. Perhaps for this reason the Government unexpectedly accepted the need to include a statutory safeguard against surrender on grounds of the triviality of the offence. Similarly, extradition is precluded if it appears that because of the passage of time or because the accusation was not made in good faith "it would, having regard to all the circumstances, be unjust or oppressive to return him"⁶⁷.

Given the fact that provisions deriving from the 1870 Act will continue to govern many extradition cases, the opportunity was taken to add to the list of extradition crimes contained in Schedule I thereof. These include offences under s.24 of the Drug Trafficking Offences Act 1986⁶⁸.

Given the fact that the UK has for long been wedded to the territorial principle of jurisdiction it will come as no surprise to learn that the 1870 Act was formulated on the assumption that there would be a strong territorial connection between the offence complained of and the requesting state. In practice extradition was possible when the offence took place in the requesting state's land territory, territorial waters or other locations "generally treated as part of its territory" such as on ships and aircraft registered in the requesting state⁶⁹.

It will be recalled, however, that the UK has never relied exclusively on the territorial principle. As the English Law Commission noted in its 1978 Report on the Territorial and Extraterritorial Extent of the Criminal Law limited reliance has been placed on other jurisdictional grounds⁷⁰.

Given these factors the government has concluded that it is in the interests of justice that the United Kingdom should be able to surrender fugitives in respect of a broad range of extraterritorial offences⁷¹. To this end the Act makes provision for two specific categories:

- (1) where "in corresponding circumstances equivalent conduct would constitute an extra-territorial offence against the law of the United Kingdom ..." ⁷² and
- (2) other extra-territorial offences which satisfy all of the following conditions:
 - (a) the requesting state bases its jurisdiction on the nationality of the offender;
 - (b) the conduct occurred outside the UK; and,
 - (c) that, if it occurred in the UK, it would constitute an offence under the law of the UK⁷³.

This comprehensive recognition of the sufficiency of a nationality nexus for extradition purposes will again be of particular benefit to civil law countries which use it extensively.

Finally, it will be recalled that it is a general feature of extradition practice that "the requested state should exercise some control over the prosecution of the surrendered fugitive for other crimes committed before his surrender" ⁷⁴. Under the Extradition Act 1870 this takes the form of requiring that the individual may not "be tried in that foreign state for any offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is grounded" ⁷⁵. By way of contrast a much more flexible approach was adopted both in Article 14 of the European Convention on Extradition and section 4(3) of the Fugitive Offenders Act. The latter, for example, "enables the fugitive to be dealt with for any lesser offence proved by the facts or for any other relevant offence to which the Secretary of State consents" ⁷⁶. The Government reached the conclusion that the speciality rule should be relaxed along the lines of the 1967 Act and the Extradition Act 1989 makes provision to that end⁷⁷.

In the light of the above it must be concluded that the United Kingdom has through these measures ensured that it will in future be significantly easier for foreign states to secure the extradition of fugitives. As Warbrick has stated: "The Government intends that

there should be more extradition and the new law is influenced more by the co-operative aspect of extradition than by the protective understanding of the process ... If the Government is right that this country is being chosen as a refuge by fugitive criminals because they think they can count on protection against extradition, the new law will have a deterrent objective, although this can only work by diverting them to other jurisdictions"⁷⁸.

4. BILATERAL TREATY PRACTICE

In addition to modernising and reshaping the traditional weapon of extradition the enhanced awareness of the need for international co-operation to combat the illicit trade in narcotic drugs has led the United Kingdom into the conclusion of a number of innovative bilateral agreements. In this process the needs and demands of Anglo-American relations have been particularly influential.

(a) The Caribbean Connection

The first novel and drugs specific bilateral arrangement worthy of note was concluded with the United States in November 1981 and addressed the issue of narcotics interdiction at sea⁷⁹. The need for such an agreement, recently examined in detail elsewhere,⁸⁰ arose out of the frequent use of private foreign flag vessels to import marijuana and, to a lesser extent, cocaine into the United States⁸¹. Given the location of certain major source and transit countries in South and Central America and in the Caribbean this problem presented itself in a particularly acute form in Florida and along the Gulf coast. Among the foreign vessels involved in this illicit trade were some registered in the United Kingdom and in Britain's Caribbean dependencies⁸².

Although the international law of the sea affords to coastal states adequate law enforcement powers within territorial waters and the contiguous zone,⁸³ the United States, for practical reasons, wished to extend its maritime interdiction programme to the high seas⁸⁴. As US Circuit Judge Kravitch stated in US v Gonzalez: "One need only glance at a map of the [Caribbean] region and compare the vast length of the United States coast to the narrow straits between Yucatan and Cuba ... and the other narrow passages through the West Indies to understand the reasonableness of enforcing our drug laws outside of our territorial sea"⁸⁵.

The central international legal difficulty raised by such an interdiction strategy is reflected in the universally accepted doctrine of exclusive flag state jurisdiction on the high seas⁸⁶. Thus, if the strategy was to be effective and comport with international law the cooperation of the relevant foreign flag states was essential.

The initial approach adopted by the Department of State was to request ad hoc consent from foreign governments, including that of the United Kingdom,⁸⁷ to search and, if warranted, seize vessels suspected of narcotics trafficking⁸⁸.

This process was clearly an unsatisfactory one in that it was bound to be time consuming with attendant practical disadvantages for effective law enforcement⁸⁹. These matters were eventually addressed in negotiations between the two governments during which it was agreed to dispense with the need for case-by-case UK consent in a formal agreement. This goal was realised in the conclusion of the 13 November 1981 Exchange of Notes on Co-operation in the Suppression of the Unlawful Importation of Narcotic Drugs into the United States⁹⁰. This Agreement is essentially non-reciprocal in nature and is designed solely to facilitate the effective enforcement of US law subject to a number of necessary safeguards for the UK.

Paragraph 1 of the Exchange of Notes which triggers US involvement in any instance provides that the British Government "will not object to the boarding by the authorities of the United States ... of private vessels under the British flag in any case in which those authorities reasonably believe that the vessel has on board a cargo of drugs for importation into the United States in violation of the laws of the United States". The area in which this right to board is afforded is defined in paragraph 9. It includes all of the Gulf of Mexico and the Caribbean Sea, an extensive area of the Atlantic Ocean "South of latitude 30 North and all other areas within 150 miles of the Atlantic coast of the United States"⁹¹. Subsequent provisions govern the search and seizure of crew and vessel⁹². The Agreement also provides a number of safeguards⁹³ including the right of the United Kingdom, within specified time periods, to object to the continued exercise of US jurisdiction over the vessel⁹⁴ and to the prosecution of any United Kingdom national found on board the vessel⁹⁵. The consequence of such an objection is to require the United States to release the vessel or person in respect of which the objection has been lodged.

In spite of the obvious ability of the UK to frustrate the operation of this Agreement through the frequent use of the power to require the release of vessels and prevent the prosecution of nationals this does not appear to have happened in practice. Indeed the evidence suggests that it has been a valuable tool in actual law enforcement⁹⁶ and the relevant reported cases do not reveal that the nature or terms of the Agreement have restricted the ability of US prosecutors to secure convictions⁹⁷.

The second major innovation in British narcotics treaty practice also involved the United States and arose in the highly charged context of the debate on the proper limits to American assertions of extraterritoriality⁹⁸. More specifically, as Nadelmann has explained, the most pervasive example of judicial extraterritoriality "has been the demands by US prosecutors for production of documents and other evidence located abroad which are deemed necessary to government investigations and court proceedings. Such demands, most often issued in the form of subpoenas for documents or testimony, have placed the recipients in the uncomfortable position of having to choose between complying, and thereby violating their own domestic law, and refusing to comply and thereby being charged with contempt by the American court"⁹⁹. Many states consider such unilateral American measures as violations of international law¹⁰⁰.

British involvement in this context flowed from the spectacular growth throughout the 1960s and 1970s of its small Caribbean dependency of the Cayman Islands as an offshore financial centre. As one commentator has noted, "[i]n 1964 the Cayman Islands had two banks and no offshore business. By 1981 the Caymans had 360 branches of US and foreign banks, over 8,000 registered companies, and more telex machines per capita ... than any other country".¹⁰¹ Through its convenient location "a short suitcase journey from Miami",¹⁰² its well developed bank secrecy legislation,¹⁰³ its tax free status,¹⁰⁴ and its political stability, among other factors,¹⁰⁵ the Cayman Islands had become, in the words of one American commentator, "the quintessential secrecy haven in this hemisphere...."¹⁰⁶.

In the course of time both the American Government and US prosecutors became convinced that this British dependency was being extensively used both for the evasion of US revenue laws and for the "laundering"¹⁰⁷ of the illicit profits derived from narcotics trafficking and other criminal activities¹⁰⁸. In these circumstances clashes between the needs of US prosecutors and the requirements of Caymanian secrecy legislation were, perhaps, inevitable¹⁰⁹.

In spite of efforts to address the issue of the need for enhanced co-operation through diplomatic channels,¹¹⁰ and the occasional use of non-controversial methods to obtain confidential information located in the Cayman Islands,¹¹¹ matters came to a head in

1983. The specific cause of tension between the two states arose when the Miami branch of the Bank of Nova Scotia was fined \$1,825,000 for a civil contempt of court which resulted, in part,¹¹² from its failure to produce documents held by its branch in the Cayman Islands even though compliance with the grand jury subpoena, issued in the course of a narcotics investigation, would have constituted a violation of the secrecy laws of that jurisdiction¹¹³.

The Bank of Nova Scotia case coloured relations between the two states and, in the words of the English Attorney-General, Sir Michael Havers, "prompted the UK and US Governments in the context of the extraterritoriality talks then being held to agree to talks to try and reach a settlement acceptable to all parties involved for dealing with narcotics cases in future"¹¹⁴. The outcome was the 26 July 1984 Exchange of Letters between them "concerning the Cayman Islands and Matters connected with, arising from, related to, or resulting from any Narcotics Activity referred to in the Single Convention on Narcotic Drugs, 1961, as amended by the Protocol amending the Single Convention on Narcotic Drugs, 1961"¹¹⁵. The Agreement entered into force in the following month after the Cayman Islands legislature enacted The Narcotic Drugs (Evidence) (United States of America) Law which was needed in order to give domestic legal effect to its terms¹¹⁶.

This agreement, which is non-reciprocal in nature, establishes a simple and straightforward procedure whereby the United States can obtain assistance in investigations and prosecutions involving drug trafficking¹¹⁷. Provision is made, upon receipt of a certificate from the Attorney-General of the United States,¹¹⁸ for the "production of documents and records, together with provision of foundation testimony, authentication, and certification necessary for these documents and records to be admissible in court in the United States"¹¹⁹. In exchange for these concessions the American Government agreed to limit the use of unilateral measures in narcotics cases. This is provided for in Article 6 which reads:

"No Federal subpoena (including a Grand Jury subpoena) relating to documentary information located in Cayman in any matter falling within ... this Agreement will be enforced in the United States without the prior agreement of either the United Kingdom Government or the Cayman Government."

Although this dealt with the specific source of friction at issue in the Bank of Nova Scotia case it was not a complete solution to the judicial extraterritoriality controversy in that it did not seek to "prevent the Americans from obtaining subpoenas in non-narcotics cases"¹²⁰.

Since the agreement entered into force it has been extensively used and of practical utility in law enforcement. As early as 30 June 1986 the English Attorney-General, in the course of a speech to the American Bar Association, was able to report that the evidence produced as a result of the Agreement "has been instrumental in furthering federal investigation into several hundred million dollars of drugs trafficking. Several notorious drugs offenders have been put behind bars as a result"¹²¹. Similarly, the evidence suggests that "[p]rosecutors and agents concerned with drug cases ... have been largely satisfied with the Agreement's limited but effective reach"¹²². Indeed, so pleased have the respective Governments been with the experiment that they have since concluded similar Agreements in respect of all of the remaining Caribbean dependencies of the United Kingdom¹²³.

The process of British-American co-operation in criminal matters in a Caribbean context did not, and was not intended to, end with the 1984 Exchange of Notes¹²⁴. Indeed, the text of the Agreement expressly directed the parties to take active steps to consider a treaty of wider scope concerning the Cayman Islands. Article 7(3) reads: "The Governments of the United States and United Kingdom, including Cayman, will use their best endeavours to

conclude a Law Enforcement Treaty within fifteen months of the date this Agreement comes into operation with the intention to bring such a treaty into force as soon thereafter as their constitutional procedures will allow".

In order to give effect to this undertaking it was arranged that the first round of negotiations would take place in November 1985. "The meetings between the Governments of the United Kingdom, the United States and Cayman were preceded by discussions in London between the Cayman Islands and the United Kingdom to agree strategy for the negotiations"¹²⁵. These essentially tripartite discussions, later described by the Attorney-General of the Cayman Islands as "long and arduous",¹²⁶ were brought to a successful conclusion in the following year. The product of these efforts was the 3 July 1986 "Treaty Between the United States of America and the United Kingdom of Great Britain and Northern Ireland Concerning the Cayman Islands Relating to Mutual Legal Assistance in Criminal Matters"¹²⁷.

Although, subject to what is said below, the Cayman Islands Mutual Legal Assistance Treaty (MLAT) is broadly similar in nature to earlier such treaties entered into by the US¹²⁸ it nonetheless "represents a major breakthrough in United States efforts to enlist the co-operation of Caribbean 'bank secrecy' jurisdictions in the investigation and prosecution of transborder crime"¹²⁹. For the United Kingdom the Treaty, though confined geographically to a dependency, also sets a potentially important precedent in that it is the first, and thus far the only, instance of British participation in either bilateral or multilateral full scale MLATs in the criminal law sphere¹³⁰.

The Treaty which, unlike the 1984 Agreement, is fully reciprocal in nature, makes provision for a wide variety of differing forms of assistance including: "(a) taking the testimony or statements of persons; (b) providing documents, records and articles of evidence; (c) serving documents; (d) locating persons; (e) transferring persons in custody for testimony; (f) executing requests for searches and seizures; (g) immobilizing criminally obtained assets; (h) assistance in proceedings relating to forfeiture, restitution and collection of fines; and (i) any other steps deemed appropriate by both Central Authorities"¹³¹. Such procedures are available "for the investigation, prosecution and suppression of criminal offences", as well as "civil and administrative proceedings" arising out of, relating to or resulting from narcotics trafficking¹³². It should be noted that the term "narcotics trafficking" is defined, in Article 19(3)(e) in a manner which is broader than that contained in the 1984 Exchange of Notes. This arises from the fact that it encompasses not only activities covered by the Single Convention on Narcotic Drugs but also "any other international agreements or arrangements binding upon both the Parties". As the Technical Analysis prepared by the US Departments of Justice and State opines: "This is significant because the United Kingdom has now, like the United States become a party to the Convention on Psychotropic Substances ... Other international agreements may come into force in the future, and the scope of offences covered by the treaty has the flexibility to grow as the international regulation of illegal narcotics trafficking grows"¹³³.

In the course of the negotiations it was concluded that the Treaty would not cover all criminal activity. The interaction of Article 3(1) and Article 19 results, in the words of the Attorney General of the Cayman Islands, in the fact that the treaty "does not extend to tax matters and it does not extend to trivial criminal offences"¹³⁴. The former restriction was deemed necessary by British and Caymanian negotiators in order to safeguard the viability of the latter's offshore financial business so critical to the local economy¹³⁵. The protection afforded in this regard is not, however, absolute in nature. As has been pointed out elsewhere "the treaty does authorise assistance in prosecuting two types of tax-related crime: fraud connected with income tax shelters and false statements on tax returns with respect to unlawful proceeds of other crimes covered by the treaty"¹³⁶. Finally, assistance is permitted in narcotics related tax matters. In

the words of the Technical Analysis "a civil or administrative tax proceeding involving the assets acquired through illegal drug trafficking could qualify as an offence under Article 19(3)(c) for which assistance could be provided under the Treaty"¹³⁷.

The restriction of the Treaty to what might be termed serious criminal offences is attained through the inclusion of a general rule limiting its scope to "[a]ny conduct punishable by more than one year's imprisonment under the laws of both the Requesting and Requested Parties"¹³⁸. There are, however, specified exceptions to the strict requirements of double criminality which include, in addition to narcotics trafficking, such offences as "racketeering" and "foreign corrupt practices"¹³⁹. A further element of flexibility has been provided in this regard by Article 19(3)(k) which states that the term criminal offence shall also include:

"Such further offences as may from time to time be agreed upon by exchange of diplomatic notes between the United States and the United Kingdom, including the Cayman Islands."

The prospect for using this provision to add to the list of criminal offences in a manner contrary to the perceived interests of the Cayman Islands should not, however, be overstated¹⁴⁰. As the Attorney-General informed the Cayman Islands Legislature: "We, the Government of the Cayman Islands, have a specific, categorical undertaking from our Sovereign Mother, the United Kingdom, that there will be no further offence added to this list, even though the United Kingdom and the United States both agree, without the specific consent, Sir, of the Government of the Cayman Islands. We have the say so. They cannot do it without us"¹⁴¹.

The Cayman Islands Treaty, like other MLATs concluded by the United States, contains a number of specified limitations on assistance. Thus assistance may be denied if the request is not made in conformity with the Treaty,¹⁴² or if it "relates to a political offence or to an offence under military law which would not be an offence under ordinary law",¹⁴³ or where the requested party, through its Attorney-General certifies "that the execution of the request is contrary to the public interest of the Requested Party"¹⁴⁴. In addition, however, and for the first time in US practice in this area, the Treaty permits assistance to be denied where:

"the request does not establish that there are reasonable grounds for believing:

- (i) that the criminal offence specified in the request has been committed; and
- (ii) that the information sought relates to the offence and is located in the territory of the Requested Party"¹⁴⁵.

This innovation was included in the text because the British and Caymanian negotiators wanted to ensure that the MLAT was not used as a mechanism for indulging in mere "fishing expeditions"¹⁴⁶. It is difficult to say whether or not this provision will cause difficulties in practice though it is apparent that problems may arise out of differing conceptions as to the exact burden of proof to be discharged by the requesting party. Thus, according to the US Technical Analysis "the phrase 'reasonable grounds to believe' is not the equivalent of a prima facie case Rather the phrase was intended to require each Party to support its request with a precise, rational explanation for its belief that a crime covered by the Treaty has occurred or will occur, and to set forth in detail the justification for seeking the evidence"¹⁴⁷. By way of contrast, the Attorney-General of the Cayman Islands has informed the territory's Legislature that the same phrase "basically is saying that there must be established, to use lawyers' terms, a good prima facie case"¹⁴⁸. The potential for friction between the parties is self-evident. However, "[t]he negotiators realized that occasionally there will be

differences of opinion which the law enforcement authorities who implement the Treaty will be unable to resolve despite the best of intentions. The second paragraph of Article 18 specifically recognizes that in such cases either side may seek the assistance of the diplomatic and political authorities to resolve the difficulty"¹⁴⁹.

One area in which the potential for friction has been reduced, but not eliminated, by the Treaty is that of judicial extraterritoriality. As has been pointed out elsewhere, "some methods of evidence gathering permitted under United States internal law have the practical result of evidence being collected in the Cayman Islands and being turned over to United States authorities without the permission of the Cayman Islands authorities, and are hence viewed by the Cayman Islands and the United Kingdom as impermissible intrusions into their sovereignty. They insisted that the Mutual Legal Assistance Treaty contain at least the same kind of restriction on United States extraterritorial evidence gathering that the Drug Information Agreement contains"¹⁵⁰.

Such concerns are addressed in Article 17, section 3 of which is of central importance and reads in full thus:

"3. No Party shall enforce any compulsory measure, including a grand jury subpoena, for the production of documents located in the territory of the other Party with respect to any criminal offense within the scope of this Treaty, unless its obligations under the Treaty have first been fulfilled pursuant to paragraph 4 of this Article with respect to a request concerning those documents."

It will be noted that this provision covers not only grand jury subpoenas but also other compulsory measures for the production of documents. The parties agreed that this wording encompasses trial subpoenas and "court orders to a person commanding that he sign a waiver of foreign bank secrecy or direct his bank abroad to turn over records to United States authorities ... Thus, this paragraph of the Treaty is somewhat broader in scope than the cognate provision of the Drug Information Agreement"¹⁵¹. Although this constitutes an improvement from the point of view of both the British and Caymanian governments other unilateral practices regarded as either undesirable or objectionable are not covered. As Secretary of State Shultz noted in his 23 July 1987 Letter of Submittal to the President: "The article does not, however, cover administrative summonses of agencies such as the Internal Revenue Service or the Securities and Exchange Commission, so long as the matter being investigated does not constitute a criminal offence under the Treaty. Neither does it preclude issuance of a subpoena or material witness warrant for any persons temporarily in the United States, even though the disclosure of information protected by Caymanian secrecy laws may be required"¹⁵².

The above should be read in conjunction with Article 17(4) which outlines the following procedure if a party wishes to free itself from the specified restrictions:

"4. Where denial of a request or unreasonable delay in its execution may be jeopardizing the successful completion of an investigation, prosecution or other proceeding, the Central Authority of the Requesting Party shall so inform the Central Authority of the Requested Party in writing. Thereafter, either Contracting Party may give at least 45 days' notice in writing to the other Contracting Party that, unless otherwise agreed, the Parties' obligations under this Article shall be deemed to have been fulfilled; provided that in no case shall the obligations under this Article be deemed to have been fulfilled sooner than 90 days after the date of receipt of the request for assistance."

As was pointed out in the Technical Analysis, "[t]he basic thrust of the paragraph is to insure that when the United States seeks records which are in the Cayman Islands in a case covered by the Treaty, it will use the Treaty as the avenue of first resort, and will not

utilize unilateral compulsory measures unless it has first notified the Caymanian authorities of the problem, sought their aid in the production of the records pursuant to Cayman law, accorded them a reasonable period of time for their response, then waited a further period to permit such diplomatic consultations as the parties deem appropriate"¹⁵³. Given the potential for conflict in this area Article 17 was the subject of a 3 July 1986 side letter between the American Embassy in London and the Foreign and Commonwealth Office which spelt out a number of non-binding understandings¹⁵⁴. Among other things the correspondence records that "[e]ven in those cases in which the Parties' obligations under Article 17 have been fulfilled with respect to a particular request, each Party shall continue to exercise moderation and restraint in considering the enforcement of unilateral measures to which the other objects for the production or withholding of evidence"¹⁵⁵.

Although the conclusion of the MLAT was a highly controversial issue in the domestic politics of the Cayman Islands¹⁵⁶ its legislature acted promptly to enact the necessary implementing legislation¹⁵⁷. In spite of this fact the Treaty, the terms of which can be extended by Exchange of Notes to the other British dependencies in the Caribbean region,¹⁵⁸ was not ratified by the US Senate until 24 October 1989: a situation which caused some dismay both in Cayman and in the United Kingdom¹⁵⁹.

(b) Other Bilateral Agreements and Significant Developments

Much though the above treaty practice broke new ground for the United Kingdom one should not lose sight of the fact that it was generated by, and in the main limited to, the actual and alleged misuse of the otherwise relatively insignificant Caribbean dependencies of the Crown for criminal purposes. The opportunity to involve the United Kingdom directly and centrally was not, however, to be for long neglected and again the subject of international action against drug trafficking was to act as the catalyst.

In the mid 1980s the British Government came to the conclusion that new legislative powers were needed to deprive narcotics traffickers of the proceeds of their criminal activities. In this they had the full support of the influential House of Commons Home Affairs Committee. In its May 1985 interim report on the "Misuse of Hard Drugs" the Committee stated: "The American practice, which we unhesitatingly support, is to give the courts draconian powers in both civil and criminal law to strip drug dealers of all the assets acquired from their dealings in drugs ... We recommend that the civil and criminal law of the United Kingdom be amended to provide for the seizure and forfeiture of assets connected with drug traffic in accordance with the American practice"¹⁶⁰.

This recommendation was, save in respect of civil forfeiture, generally accepted by government and was given legislative expression for England and Wales in the Drug Trafficking Offences Act, 1986¹⁶¹. As has been officially stated elsewhere: "The Act provides comprehensive new powers for tracing, freezing and confiscating the proceeds of drug trafficking, and measures to combat the laundering of illegal drugs money"¹⁶². Similar powers were assumed in respect of Scotland by the Criminal Justice (Scotland) Act 1987¹⁶³ while legislation along these lines for Northern Ireland "is expected to be introduced in the near future"¹⁶⁴. In addition to thus covering the United Kingdom proper "[l]egislation similar to the Drug Trafficking Offences Act 1986 has been enacted in the Isle of Man, Jersey, Guernsey and several dependent territories, and the necessary steps are being taken to enable the United Kingdom and all these territories to act on behalf of one another"¹⁶⁵.

It should be stressed that the above legislation is not limited to facilitating co-operation between the various jurisdictions within the United Kingdom and with the remaining dependencies. Provision is also made for the enforcement "of orders made by courts in designated countries for the recovery of the proceeds of drug trafficking. This will provide the basis for reciprocal agreements with other countries, with a view to the

enforcement overseas of orders made by our courts against assets held by convicted traffickers and vice versa"¹⁶⁶.

It is perhaps fitting that the first bilateral agreement to make use of these powers was concluded with the United States on 9 February 1988¹⁶⁷. As Sir Geoffrey Howe, the British Foreign Secretary, was to state at the signing ceremony in London: "It will strengthen the already close co-operation between our enforcement agencies. It will enable us jointly to trace, freeze and confiscate the assets of drug traffickers. The vicious circle of profiteering from the drug trade will be broken"¹⁶⁸. Since that time Britain has concluded similar agreements with Canada, Australia, the Bahamas, Switzerland, Spain, Nigeria, Malaysia and Sweden¹⁶⁹ and yet others are in prospect¹⁷⁰.

As with the Cayman Islands where a narcotics agreement led to the conclusion of a full mutual legal assistance treaty so the February 1988 Agreement with the United States commits the parties to enter into negotiations for a full MLAT within nine months of its entry into force¹⁷¹. As was noted above, the United Kingdom has not thus far directly joined in the growing practice of co-operation offered by this international mechanism. However, in February 1988 an interdepartmental working group issued a discussion paper in which it "concluded that there are strong arguments in favour of reform of United Kingdom mutual assistance law with a view to participation in formal mutual assistance arrangements"¹⁷². In late 1989 the Government introduced, in the House of Lords, the Criminal Justice (International Co-operation) Bill which is designed to give effect to this intention¹⁷³. Part I of the Bill provides the necessary powers to give domestic effect to any arrangement eventually concluded with the United States and facilitates British participation in the 1959 European Convention on Mutual Assistance in Criminal Matter¹⁷⁴ and the 1986 Commonwealth Scheme¹⁷⁵. In particular, the Bill makes provision, among other things, for: the service of process; the provision of evidence; the transfer of prisoners to give evidence or assist in investigations overseas; powers of entry, search and seizure in furtherance of overseas proceedings; and, the enforcement of certain overseas forfeiture orders. As the Minister of State for the Home Office, Earl Ferrers, was to state during the Second Reading of this measure: "having recognised the inadequacies of our existing legislation, we have been determined to secure arrangements which will place us in the first rank internationally in our ability to co-operate with other countries in this most important of areas"¹⁷⁶.

5. CONCLUSIONS

In recent years, as has been demonstrated, the United Kingdom has taken radical steps to enhance its ability to play a full and active role in the fight against international crime. In part this has taken the form of liberalising the law relating to extradition which will make it significantly easier for foreign states to secure the return from the United Kingdom of fugitives from justice.

Perhaps more importantly for the future, concern about the global nature of the drugs trade has been instrumental in the taking of the first major steps to set aside the traditional reluctance to aid other states in the execution of their penal laws. The new underlying approach of the British Government in respect of drug trafficking was articulated in 1988 by the Foreign Secretary thus: "The costs of this vice are incalculable. The misery all too clear. This is why [Her Majesty's Government] is taking a lead in fighting the menace of drug abuse. There is no place in our societies for drug traffickers. Alone we are weak in fighting them, but together we will win"¹⁷⁷.

The prospects for further developments in enhancing international law enforcement along a broader front are also bright¹⁷⁸. In the near term emphasis is to be placed on securing the passage of legislation to enable the United Kingdom to ratify the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. This is seen as a

major advance, on the multilateral front, in the fight against this significant form of international crime. As has been recently stated at the Ministerial level: "It provides a comprehensive range of measures which parties are obliged to adopt in order to penalise trafficking and to co-operate more effectively with each other ... 179. It should be noted, however, that in spite of the radical modernisation of British law which has taken place throughout the 1980s the changes which are still required, and which are currently being considered by Parliament, to enable ratification to take place are both wide-ranging and highly complex¹⁸⁰. It is nonetheless a worthwhile investment "in the fight against the evil men who produce, manufacture and distribute drugs, and who thereby corrupt society"¹⁸¹.

Footnotes

1. See, eg., Home Office, Tackling Drug Misuse: A Summary of the Government's Strategy (3rd ed, 1988: HMSO, London) at pp 5-6. In May 1989 the Home Secretary, Mr Douglas Hurd, stated: "In the United Kingdom, all the main indicators have risen substantially over the last few years and continue to do so." Pompidou Group Ministerial Meeting 18-19 May 1989, Opening by Home Secretary: Speaking Notes, (unpublished typescript provided by the Home Office), p.1.
2. Tackling Drug Misuse, id., at p.6. For a recent discussion of trends in drug use within the UK see, House of Commons, Home Affairs Committee, Drug Trafficking and Related Serious Crime, H.C. Paper No. 370-I, 1988-89, para. 6 - para. 13.
3. House of Commons, Home Affairs Committee, Misuse of Hard Drugs (Interim Report), H C Paper No 399, 1984-85, para. 2.
4. Home Affairs Committee inquiry into Drug Trafficking and Related Serious Crime: Memorandum Submitted by the Home Office H.C. Paper No.370-i, 1988-89, p.6. para. 40.
5. Parl. Deb., H.C., Vol 144, No 24, 11 January 1989 col 823-824 (Oral Answers). On the street price of selected illicit drugs in the UK see, Parl. Deb., H.C. Vol.149, No. 73, 21 March 1989 col. 538 (Written Answers). On the concern felt over the appearance in the UK of the cocaine derivative known as "crack" see, the remarks of the Parliamentary Under-Secretary of State for the Home Department, Parl. Deb., H.C., Vol. 154, No.118, 9 June 1989, col.520; House of Commons, Home Affairs Committee, Crack: The Threat of Hard Drugs in the Next Decade (Interim Report), H.C. Paper No.536, 1988-89; and statement of the Home Office Minister of State, Parl. Deb., H.C., Vol.163, No.14, 8 December, 1989, col. 598.
6. M Plant, The Epidemiology of Illicit Drug Use and Misuse in Britain, in S MacGregor (ed), Drugs in British Society (1989: Routledge, London) p.52, at p.61.
7. See, R Brettle et al, Human immunodeficiency virus and drug misuse: the Edinburgh experience (1987) 295 British Medical Journal p.421. See also, J Robertson, Epidemic of AIDS related virus (HTLV-III/LAV) infection among intravenous drug abusers, (1986) 292 British Medical Journal p.527. On 8 December 1989 the Home Office Minister of State informed the House of Commons that "in Scotland over 50 per cent of the HIV-positive people obtained the virus through the sharing of drug-misusing equipment". Supra, note 5, at col. 597.
8. Plant, supra, note 6, at p.62. See also, the May 1989 remarks by the Home Secretary, supra, note 1, at p.2.
9. See generally, Tackling Drug Misuse, supra, note 1. The main strands are reducing supplies from abroad, increasing the effectiveness of enforcement, maintaining effective deterrents and tight domestic controls, developing prevention and education, and improving treatment and rehabilitation.
10. There is an ever growing literature on the global nature and extent of the problem of illicit drug use. See, eg., B Whitaker, The Global Fix: The Crisis of Drug Addiction (1988: Methuen, London). See also, Report of the International Narcotics Control Board for 1988 (1988: United Nations, New York).
11. See, eg., Tackling Drug Misuse, supra, note 1, at pp.9-12.

12. See, id., at p.36 for a breakdown on British departmental responsibilities in this area.
13. Supra, note 4, p.2, para.7. As the Home Affairs Select Committee recently noted: "About 95 per cent by weight of the drugs seized in this country are taken at ports or airports or on the high seas." Supra, note 2, para. 59.
14. See, United Nations Treaty Series, Vol.976, at p.106. The United Kingdom ratified the Single Convention on Narcotic Drugs on 2 September 1964 and ratified the amending Protocol of 1972 on 20 June 1978. See, Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 1987 (1988: United Nations, New York), at p.243 and p.258.
15. See, Home Office Memorandum of December 1984, reproduced in House of Commons, Home Affairs Committee, Misuse of Hard Drugs, H.C. Paper No.66, 1985-86, Minutes of Evidence, 27 March, 1985, para.21.
16. See, United Nations Treaty Series, Vol. 1019, at p.176.
17. See, eg., S.K. Chatterjee, A Guide to the International Drugs Conventions (1988: Commonwealth Secretariat, London), at pp 17-19. For a brief overview of the international approach to narcotics matters see, A No11, Drug Control International, Encyclopaedia of Public International Law, Vol.9, p.106.
18. Supra, note 15, para.21.
19. See, Multilateral Treaties Deposited with the Secretary-General, supra, note 14, at p.251.
20. See, (1988) 26 International Legal Materials p.1637. See also, UN Narcotics Conference Meets in Vienna (1987) (September) Department of State Bulletin p.77.
21. For the text see, (1989) (April) Department of State Bulletin, p.49. For the formal announcement of British signature see, Parl. Deb., H.C. Vol. 148, No.63, 8 March 1989, col 549 (Written Answers). As of the time of writing the United Kingdom has introduced into Parliament legislation which, when enacted, will permit ratification of this important Convention. See, Criminal Justice (International Co-operation) Bill. H L Bill 11, 1988-89. This government measure received its Second Reading in the House of Lords on 12 December 1989. At that time Earl Ferrers, Minister of State, noted that whilst some 75 states had signed the Convention as of that date only 3 (The Bahamas, Nigeria and China) had ratified it. See, Parl. Deb., H L, Vol.513, No.13, 12 December 1989, at col. 1217. He did not mention the important fact that the US Senate has given its advice and consent to the ratification of this measure. See 101st Cong, 1st Sess, Senate, Exec Rept 101-15.
22. See, eg., supra, note 4, p.3 para. 13 - para. 14. For a more detailed account of the history and nature of this body see, eg., 20 March 1985 supplementary memorandum submitted by the Home Office, reproduced in supra, note 15. See also, Nagler, The Council of Europe Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (the Pompidou Group), (1987) 39 Bulletin on Narcotics No.1, p.31. The problem of the international trade in narcotic drugs now regularly appears on the agenda of multilateral fora in which the UK participates. See, eg., the Economic Declaration of 16 July 1989 issued by the 7 major industrialised nations and the President of the Commission of the European Communities (1989) (September) Department of State Bulletin p.13 at pp.16-17.

23. See, eg., supra, note 3, at para.6.
24. See, Art. 36, supra, note 14. On the nature and importance of extradition in this context see generally, Division of Narcotic Drugs, Extradition for Drug-Related Offences (1985: United Nations, New York). See also, K Fisher, Trends in Extraterritorial Narcotics Control: Slamming the Stable Door After the Horse has Bolted (1984) 16 New York University Journal of International Law and Politics p.353, at pp.382-383.
25. Art 22, supra, note 16.
26. Art 6, supra, note 21.
27. Ch.52, 1870 (UK). For a brief overview of UK extradition law see, E C S Wade and A W Bradley, Constitutional and Administrative Law (10th ed 1985: Longman, London), pp. 462-470.
28. Extradition, Cmnd.9421 (1985), p.1.
29. See generally, A Review of the Law and Practice of Extradition in the United Kingdom: Report of an Interdepartmental Working Party (1982: Home Office, London).
30. See, supra, note 28.
31. See, Criminal Justice: Plans for Legislation Cmnd.2658 (1986), para.47 - para. 52.
32. Criminal Justice Act 1988, 1988 c 33 (UK) (hereafter CJA) See generally, C Warbrick, Current Developments: International Law. III. Extradition (1989) 38 International and Comparative Law Quarterly p.424.
33. 1967 c 68 (UK) as amended by CJA, Sch 1, Part III.
34. Cm. 712 (1989). A Supplementary Report, dealing with issues arising in the context of certain multilateral treaties, is reproduced in H L Paper 68-II, 1988-89, at p.vii.
35. 1989, c.33 (UK) (hereafter EA).
36. Id., s.38(2).
37. Id., s.1(3) and Sch.1. As Mr James Rennie, Parliamentary Counsel, stated in evidence before the Joint Committee on Consolidation Bills: "The 1870 Act is still in force. I should explain to the Committee that it will continue to be in force because it will govern extradition between the United Kingdom and countries with which we have existing treaties until those treaties are denounced or replaced. There is no possibility now of a new 1870 treaty. That is prohibited by the 1988 Act. Any new extradition arrangements therefore will be made under the 1988 procedure The situation is therefore that there are three statutes, 1870, 1967 and 1988. We are consolidating all of them. As the 1870 Act will gradually become less important, it is set out in a Schedule, Schedule 1 to the Bill." H L Paper 68-II, 1988-89, p.8.
38. 1965, c 45 (UK), as amended by CJA, Sch 1, Part II. For the reasons behind and the nature of this bilateral arrangement see, supra, note 28, p.20.

39. See, eg., D W Greig, International Law (2nd ed 1976: Butterworths, London), at p 408. See also, Factor v Laubenheimer 290 US 276, 287 (1933).
40. See, T. Stein, Extradition, Encyclopaedia of Public International Law, Vol.8, p.222, at. p.223.
41. See, supra, note 28, at pp.14-15. But see, V. E. Hartley Booth, British Extradition Law and Procedure (1980: Sijthoff & Noordhoff, Alphen aan den Rijn), Vol.I, at pp.12-13 and p.300.
42. See, Extradition Treaty between the United States of America and the United Kingdom of Great Britain and Northern Ireland, 8 June, 1972. Cmnd. 6723 (1977). For a listing of other bilateral treaties see, e.g., supra, note 29, at pp.117-118.
43. See, Cmnd. 9869 (1986).
44. See, Cmnd. 9915 (1986). See also, A V Lowe and C Warbrick, Current Legal Developments: II. Extradition: The Supplementary Extradition Treaty Between the United Kingdom and the United States (1987) 36 International and Comparative Law Quarterly p.404; B Kulman, Eliminating the Political Offence Exception for Violent Crimes: The Proposed United States-United Kingdom Supplementary Extradition Treaty, (1986) 26 Virginia Journal of International Law p.755; and, S Lubet, Extradition Unbound: A Reply to Professors Blakesley and Bassiouni (1989) 24 Texas International Law Journal, p.47.
45. This is non-inclusive of Commonwealth countries where the subject is governed by the 1966 "Scheme Relating to the Rendition of Fugitive Offenders within the Commonwealth" as amended. For the consolidated text see, Commonwealth Schemes on Mutual Assistance in the Administration of Justice (1989: Commonwealth Secretariat, London), at p.1. As the Legal Division of that body has explained "a 'Scheme' is not a formal multilateral Treaty or Convention, but rather a set of agreed recommendations endorsed by a Law Ministers' Meeting and collectively recommended as a guide to Commonwealth governments for adoption to regulate their relations with other member countries". Id., p.i. In addition, the UK has become a party to a relatively small number of multilateral treaties, dealing with certain types of serious crime of international concern, in which provision is commonly made for extradition. See, eg., supra, note 28, p.19. See also, EA s.22-s.25.
46. Parl. Deb., H.L., Vol. 489, No.20, col. 58.
47. See, supra, note 29, at pp.6-9. See also, supra, note 28, at pp.14-15.
48. EA, s.3(3)(b).
49. Id., s.15. It should be noted that no Parliamentary control over this process is provided for. However, there is an expectation that in such cases the Secretary of State will take such steps as are required to satisfy himself "that the standards of justice and penal administration in the requesting state were such that it would be in the interest of justice to surrender the fugitive". Supra, note 28, p.15.
50. EA, s.6(2).
51. Supra, note 28, p.4. See also, C Warbrick, The Criminal Justice Act 1988: (1) The New Law on Extradition (1989) Criminal Law Review p.4, at pp.9-10.
52. See, supra, note 31, at para.50.

53. Supra, note 28, p.5. See also, supra, note 31, para. 50.
54. See, eg., the speech of Lord Irvine of Lairg, Parl. Deb., H.L. 5th Ser., Vol. CDLXXXVIII, 14 July 1987, col. 950 - col. 954. The requirement remains in cases of ad hoc extradition. It also remains in respect of rendition to Commonwealth countries. Commonwealth Law Ministers reaffirmed their support for the requirement at their meeting in Harare in 1986 though certain other changes to the Scheme were agreed at that time. See, Commonwealth Law Ministers' Meeting Harare 26 July - 1 August, Communique (LMM (86)64).
55. See, eg., Parl. Deb., H.L., Vol. 489, No.20, 20 October 1987, col.27 (The Earl of Caithness). For the text of the European Convention on Extradition of 13 December 1957 see, United Nations Treaty Series, Vol. 359, p.274.
56. EA, s 4(5). See also, Parl. Deb., H.C. Vol. 125, No.74, 18 January 1988, col. 681-682 (Secretary of State for the Home Department); and, C Warbrick, supra, note 51, at p.11.
57. EA, s.9(8)(a).
58. Id.
59. See, clause 5(4)(a) of the 1966 Scheme, supra, note 45. It is understood that the issue of modification of this requirement remains under active discussion in relevant governmental circles within the Commonwealth.
60. See, EA, s.13.
61. See, supra, note 28, at pp. 9-11. For a listing of such offences see, supra, note 29, at pp.106-107. Most drug related offences are so included by virtue of s.1 of the Extradition Act 1932, 1932 c.39 (UK). See also, EA, Sch. 1, s.20 and Sch. 2.
62. See, Art. 2 of the European Convention, supra, note 55.
63. EA, s.2(1)(a). See also, s.2(4)(b) and (c).
64. EA, s.2(4)(a).
65. See, EA s.2(1)(a). This uses the 12 months punishment threshold in spite of the fact that the revised Commonwealth Scheme specifies the more exacting standard of "two years or a greater penalty". See, Clause 2(2) of the Scheme, supra, note 45. There is nothing to prevent a Commonwealth country adopting a more concessive policy in its legislation than that required by the Scheme.
66. See, eg., supra, note 29, at pp 108-116.
67. See, EA, s 11(3) and s 12(2)(a).
68. ie., assisting another to retain the benefit of drug trafficking. See, EA, s 38(4).
69. For a discussion of this issue see, supra, note 29, at pp 16-18.
70. Law Commission No.91 (1978: HMSO, London). See also, J. Lew, The Extraterritorial Criminal Jurisdiction of English Courts (1978) 27 International and Comparative Law Quarterly p.168; and, P Ferguson, Jurisdiction and Criminal Law in Scotland and England (1987) Juridical Review p. 179.

71. See, eg., supra, note 28, at p. 21.
72. EA, s.2(2). See also, Warbrick, supra, note 51, at p.8.
73. EA, s.2(3).
74. Supra, note 28, p.13.
75. Extradition Act, 1870, supra, note 27, s.3(2).
76. Supra, note 28, p.13.
77. EA, s.6(4)-(7). See also, s.18-s.20 for similar provisions governing the position of an individual returned to the UK.
78. Warbrick, supra, note 51, p 14. The ability of the UK to take full advantage of the new law is somewhat circumscribed by the recent decision by the European Court of Human Rights as to the relevance of the Convention in the context of extradition to a non-Convention state. See, Soering v United Kingdom (7 July 1989).
79. Exchange of Notes Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America Concerning Co-operation in the Suppression of the Unlawful Importation of Narcotic Drugs into the United States, 13 November 1981, Cmnd. 8470 (1981).
80. See, W Gilmore, Narcotics Interdiction at Sea: UK-US Co-operation (1989) 13 Marine Policy p.218.
81. See, Congress of the United States, Office of Technology Assessment, The Border War on Drugs (1987: Washington DC) at p.24 and p.27.
82. Five such dependencies remain in the area of greatest concern in this context; viz, Montserrat, Anguilla, British Virgin Islands, Cayman Islands, and Turks and Caicos Islands.
83. The U.S. retained its traditional 3 mile territorial sea claim until 27 December 1988 when it was extended to 12 nm by Presidential Proclamation. See, (1989) 28 International Legal Materials p.284. Narcotics law enforcement within this zone is facilitated by Art. 19(1)(d) of the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone. The US and the UK are both parties to this convention. A limited contiguous zone claim is provided for in the US Anti-Smuggling Act of 1935. See, 19 USC 1701-1711. Such zones are now accepted in international law. See, eg., Art 24, 1958 Geneva Convention on the Territorial Sea and Contiguous Zone.
84. See A W Anderson, In the Wake of the Dauntless: The Background and Development of Maritime Interdiction Operations, in T A Clingan (ed) The Law of the Sea: What Lies Ahead? (1988: Law of the Sea Institute, Honolulu), p.11.
85. 776 F. 2d 931 (1985) at 939.
86. See, Art. 6(1) and Art 22 of the 1958 Geneva Convention on the High Seas. See also, L Sohn, International Law of the Sea and Human Rights Issues, in T A Clingan (ed), supra, note 84, p.51, at p.59. Domestic law in the US was amended in 1980 to facilitate prosecution. See, 21 USC 955a-955d. See also, Fisher, supra, note 24 at pp.374-387; and, S Lewis, The Marijuana on the High Seas Act: Extending US Jurisdiction Beyond International Limits (1982) 8 Yale Journal of World Public Order

- p.359. US Law in this respect was further refined in the form of the 1986 Maritime Drug Law Enforcement Act. See, 46 USC 1901-1903.
87. For a description of British involvement see eg., US v Green 671 F 2d 46 (1982) at 49. For an example of a US seizure of a British flag vessel seemingly without prior consent see, US v Postal 589 F 2d 862 (1979).
 88. For a description by the US Department of State of the normal practice see, (1982) 72 American Journal of International Law, p.377, at p.377, at p.379.
 89. See, eg., testimony of Admiral Cueroni of the US Coast Guard, in Defining Customs Waters for Certain Drug Offences: Hearing Before the Subcommittee on Crime of the Committee on the Judiciary, House of Representatives, 16 May, 1985 (1986: Washington, D.C.), at p.55. See also, testimony of Stuart P Sidel, id., at p.47. In 1986 the US Congress found that "this process, and obtaining the consent of the country of registry to further law enforcement action, may delay the interdiction of the vessel by 3 or 4 days". See, annotations to 46 USC 1902.
 90. Supra, note 79. See Generally, J Siddle, Anglo-American Co-operation in the Suppression of Drug Smuggling, (1982) 31 International and Comparative Law Quarterly, p.726.
 91. Para. 1 has received judicial consideration in the United States. See, eg., US v. Reeh 780 F.2d 1541 (1986), at 1544; and US v Quemener 789 F.2d 145 (1986) at 145. The latter case also considers the terms of para. 9. See, id., at 148-153. See also, Gilmore, supra, note 80, at pp.222-225. The terms and conditions of the 1981 Agreement have been used as the basis for ad hoc seizures in other areas. See, eg., US v Biermann 678 F Supp. 1437 (1988), discussed by B Weinstein in (1989) 83 American Journal of International Law, p.99.
 92. See in particular, supra, note 79, para. 2 and para. 3.
 93. See eg., id., para. 6 and para. 7.
 94. See, id., para. 4.
 95. See, id., para. 5. See also, 13 November 1981 letter from the Head of the Maritime, Aviation and Environment Dept., Foreign and Commonwealth Office to the US Embassy, London, reproduced in (1981) British Year Book of International Law, at p.472.
 96. See, eg., US Coast Guard, General Law Enforcement Digest of Interdiction Statistics (3/31/89) (1989: Washington, D.C.), at pp.13-14. 1988 data reproduced in Gilmore, supra, note 80, at p.227.
 97. See, Gilmore, id., at p.227, note 73. The possibility of further co-operation among states in the interdiction of drug smugglers at sea is to be expected in the light of Article 17 of the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, supra, note 21. See also, Article 4(1)(b)(ii). The UK Government has submitted amendments to the Criminal Justice (International Co-operation) Bill, supra, note 21, in order to take full advantage of the above provisions. See, Parl. Deb., H.L. Vol. 513, No.13, 12 December 1989, col. 1218 (per Earl Ferrers) and, infra, note 180. See also, H C Paper No. 370-II, 1988-89, at p.165 for a similar statement by the Home Office. For a recent example of Royal Navy assistance to the US Coast Guard in the interdiction of a US registered vessel off the coast of Mexico see, "Royal Navy helps seize drug boat", The Independent (London) 4 September 1989. Also of interest in this context was the announcement, on 27 September 1989, that bilateral assistance to the Republic of Colombia would

include "Periodic deployments of Royal Navy vessels to assist the Colombians with maritime surveillance". "Policy Statement: British Foreign Secretary Announces Package of Anti-Drugs Assistance for Colombia", 27 September 1989 (unpublished: text provided by Embassy of Colombia, London). See also, "Navy to Join War on Drugs in Colombia" The Times (London) 28 September 1989. According to one report "The idea is that the frigate could act as a surveillance centre for identifying and tracking shipping on the Caribbean drug route from Colombia to the United States and Canada". "Aid Frigate Pays a Quiet Call" The Guardian (London) 5 October 1989.

98. See generally, A V Lowe, Extraterritorial Jurisdiction (1983: Grotius Publications, Cambridge). See also, Restatement of the Law Third: The Foreign Relations Law of the United States (1987: American Law Institute, St Paul, Minn.) Vol. I, pp.340-366.
99. E Nadelmann, Unlaundering Dirty Money Abroad: US Foreign Policy and Financial Secrecy Jurisdictions (1986) 18 Inter-American Law Review p.33 at p.50. See also, B Zagaris and J Rosenthal, Securing Documents Overseas by the United States, in M C Bassiouni (ed.) International Criminal Law: Volume II, Procedure (1986: Transnational Publishers, Dobbs Ferry, N.Y.), p.373.
100. See, eg., F Knecht, Extraterritorial Jurisdiction and the Federal Money Laundering Offence (1986) 22 Stanford Journal of International Law p.389, at pp.415-419; and R Geiger, Legal Assistance Between States in Criminal Matters, Encyclopaedia of Public International Law, Vol.9, p.248, at p.249. For an overview of the British position see, Sir Michael Havers, Good Fences Make Good Neighbours: A Discussion of Problems Concerning the Exercise of Jurisdiction (1983) 17 International Lawyer p.784.
101. E Nadelmann, Negotiations in Criminal Law Assistance Treaties (1985) 33 American Journal of Comparative Law p.467, at p.499.
102. R Blum, Offshore Haven Banks, Trusts, and Companies: The Business of Crime in the Euromarket (1984: Praeger, New York), p.62.
103. See, eg., G. Smith, Bank Secrecy in the Cayman Islands (1986) 10 West Indian Law Journal, p.114.
104. See, J Horowitz, Piercing Offshore Bank Secrecy Laws Used to Launder Illegal Narcotics Profits: The Cayman Islands Example (1985) 20 Texas International Law Journal p.133, at p.138.
105. In 1984 the US Department of the Treasury stated: "There is no single, clear, objective test which permits the identification of a country as a tax haven. There are, however, a number of factors which are generally accepted as characteristic of tax havens. These include: relatively low rates of tax; bank or commercial secrecy laws or administrative practices which the country is generally unwilling to breach; a banking and financial sector which is large in relation to general levels of domestic economic activity; the availability of modern communications facilities; the absence of currency controls on foreign deposits of foreign currencies; and self promotion as an offshore financial center". Department of the Treasury, Tax Havens in the Caribbean Basin (1984: Washington, D.C.) p.2. For a recent review of US law and practice in respect of such entities see, W Caccamise Jr., US Countermeasures Against Tax Haven Countries, (1988) 26 Columbia Journal of Transnational Law p.553.

106. Supra, note 104, p.136. In March 1989 the US Department of State noted that "The Cayman Islands has become the largest offshore banking center in the Caribbean". Department of State, Bureau of International Narcotics Matters, International Narcotics Control Strategy Report (1989: Washington, D.C.), p.41 (hereafter INCSR).
107. A 1987 Staff Report prepared for the use of the Senate Caucus on International Narcotics Control stated: "Money laundering is the process of changing money gained from illegal operations into a manageable form while concealing its illicit origins. Narcotics trafficking creates the largest demand for money laundering, but organised crime activities such as gambling and loan sharking also create a demand." Legislation Aimed at Combating International Drug Trafficking and Money Laundering, 100th Congress, 1st Session, S Print 100-67, p.13.
108. See, Department of the Treasury, supra, note 105, at p.34 and p.40. See also, supra, note 107, at p.15; and, A Grilli, Preventing Billions from being Washed Offshore: A Growing Approach to Stopping International Drug Trafficking (1987) 14 Syracuse Journal of International Law and Commerce p.65, at p.67.
109. The initial clash arose out of a tax evasion investigation and resulted in the celebrated case of In re Grand Jury Proceedings, US v Field, 532 F 2d 404 (1976). See, B Westreich, Federal Judicial Compulsion of an Alien's Testimony Contrary to the Mandate of the Laws of His Native Land (1977) 16 Columbia Journal of Transnational Law p.356. See also, supra, note 104, at pp 150-152. For a subsequent discussion of this case see, eg, In re Grand Jury Proceedings, US v Bank of Nova Scotia 691 F 2d 1384, at 1389-1391.
110. As with the so-called Gentlemen's Agreement of 1982. For the substance of this exchange see, In re Grand Jury Proceedings, US v Bank of Nova Scotia 740 F 2d 817 (1984) at 823-825. This was characterised by the US Court of Appeals as "not a binding, enforceable agreement but rather as an experimental and tentative alternative for the production of documents". Id, at 829-830.
111. As with the use of letters rogatory. For a discussion of the use of this procedure in the context of US-Cayman Islands relations see, supra, note 104, at pp.152-156. Also of interest more generally is L Paikin, Problems of Obtaining Evidence in Foreign States for Use in Federal Criminal Prosecutions (1984) 22 Columbia Journal of Transnational Law p.233, at pp.253-257.
112. As the US Court of Appeals stated supra, note 110, at 821, note 5: "of the \$1,825,000 fine imposed by the district court, only \$100,000 is attributable to the failure to produce records from both the Bahamas and the Cayman Islands. The remainder of the fine is imposed solely because of the failure to produce the Bahamian records ..."
113. This case, frequently cited as Bank of Nova Scotia II, has been much discussed in the scholarly literature. See, eg., Zagaris and Rosenthal, supra, note 99, at pp.382-383; S C Weiland, Congress and the Transnational Crime Problem (1986) 20 International Lawyer, p.1025, at pp.1026-1027; and, supra, note 104, at pp.158-161.
114. Reproduced in (1986) British Year Book of International Law, at p.574. See also, Nadelmann, supra, note 99, at pp.54-56. For one characterisation of the British view prior to these events see, supra, note 102, at pp.226-232.
115. Cmnd. 9344 (1984).

116. Law 17 of 1984 (Cayman islands).
117. See, supra, note 115, Art.2.
118. See, id, Art.3. Upon receipt of such a certificate the Cayman Islands Attorney-General lacks a discretion to refuse. See, id, Art.3(2)(a). See also, supra, note 116, s.4.
119. See, "Joint Responses of Department of Justice and Department of State to Questions Asked by Senator Kerry", 101st Congress, 1st Session, Senate, Exec. Rept. No.101-8, p.101, at p.126. See also, supra, note 104, at pp.161-164; and, Nadelmann, supra, note 99, at p.56.
120. Nadelmann, supra, note 99, p.56, note 64.
121. Supra, note 114, at 574. As of August 1988 some 57 certificates had been issued by the United States pursuant to the Agreement, non-inclusive of supplementary requests. See, Banking Close-Up, Newstar (Grand Cayman, Cayman Islands), August 1988, p.10, at p.12.
122. Supra, note 101, at p.501. In 1989 Attorney-General Thornburgh informed the Senate Foreign Relations Committee that existing MLATs "and related Executive Agreements, particularly the one with the Cayman Islands, have been very successful". 101st Cong, 1st Sess, Senate, Exec Report 101-105, at p.186.
123. For the 18 September 1986 Exchange of Letters in respect of the Turks and Caicos Islands see, Cm 136 (1987). This was given legal effect within the territory by virtue of the terms of the Narcotic Drugs (Evidence) (United States of America) Ordinance 1986. Ordinance No.1 of 1986 (Turks and Caicos Islands). As of October 1988 only one certificate had been issued pursuant to this Agreement. See, eg., Narcotics Issues in the Bahamas and the Caribbean: Hearing Before the Committee on Foreign Affairs, House of Representatives, May 12, 1987 (1987: US Government Printing Office, Washington, DC), at p.92. For the Exchanges of Letters in respect of Montserrat, the British Virgin Islands and Anguilla see, Cm 426 (1988), Cm 216 (1987), and Cm 169 (1987) respectively. See also, Nadelmann, supra, note 99, at pp.58-59. There is no similar agreement with respect to Bermuda. For a description of the attitude of the Bermuda Government in this area see, S Froomkin, Money Laundering - An International Perspective, in Meeting of Law Officers of Small Commonwealth Jurisdictions: 5-9 December 1988, Hamilton, Bermuda (1989: Commonwealth Secretariat, London), p.144, at pp.149-150.
124. For example in 1987 two agreements between the UK and the USA were signed. One provided for the US "to deliver an aircraft to the Government of the Turks and Caicos Islands to be used in the fight against drug traffickers. The aircraft will also be used by the Government of the British Virgin Islands. A second Agreement has been signed to install an anti-drugs radar tracking station on the island of Providenciales in the Turks and Caicos Islands, thus extending US surveillance of the area to cover both the Bahamas and TCI". Foreign and Commonwealth Office Press Release, 31 July 1987. Neither agreement has thus far been published in the UK. See also, Parl Deb, H C, Vol. 145, No.33, 27 January 1989, col 791 (Written Answers). In 1988 the US transferred a patrol type vessel to the Cayman Islands and another to Anguilla pursuant to agreements, in the form of Memoranda of Understanding, with the UK. See, INCSR, at p.51. Other negotiations including the possible extension of the CPBAT arrangements with the Commonwealth of the Bahamas to the Turks and Caicos Islands, are taking place at the time of writing. See, eg, id, at p.123. The UK and the US also participate in certain

Caribbean regional initiatives. Thus, both accepted invitations to attend the Caribbean Ministerial Drugs Conference in Jamaica in October 1989. See, Foreign and Commonwealth Office Press Release No.134, 26 September 1989.

125. Cayman Islands Government Information, Press Release, 8 May 1986.
126. Statement of Michael Bradley, Attorney-General, during the Second Reading of the Mutual Legal Assistance (United States of America) Bill, 2-11 September 1986, (transcript provided by the Attorney-General, Grand Cayman).
127. Cmnd 9862 (1986).
128. See eg., R S Rendell's report on the Treaty on behalf of the American Bar Association in (1987) 21 International Lawyer, p.1240 at p.1241. See also, (1988) 82 American Journal of International Law pp.112-118. On the evolving US practice in this area see, eg, A Ellis and R Pisani, The United States Treaties on Mutual Assistance in Criminal Matters: A Comparative Analysis, (1985) 19 International Lawyer p.189.
129. 23 July 1987 Letter of Submittal from Secretary of State Shultz to President Reagan, in 100th Congress, 1st Session, Senate, Treaty Doc 100-8, at v.
130. See, International Mutual Assistance in Criminal Matters - A Discussion Paper (1988: Home Office, London).
131. See, supra, note 127, Art 1(2). Requests are to be made through the Central Authority of each party. Id, Art 2. The Cayman Mutual Legal Assistance Authority "shall be the Chief Justice, who shall exercise his functions under the Treaty and this Law acting alone and in an administrative capacity, or another Judge of the Grand Court designated by the Chief Justice to Act on his behalf". Mutual Legal Assistance (United States of America) Law, 1986. Law 16 of 1986 (Cayman Islands), s 4. For the reasons behind his somewhat unusual decision see, supra, note 126.
132. Supra, note 127, Art 1(1).
133. Technical Analysis of the Treaty Between the United States and the United Kingdom of Great Britain and Northern Ireland Concerning the Cayman Islands Relating to Mutual Legal Assistance in Criminal Matters 101st Congress, 1st Session, Senate, Exec Rept No 101-8, p.8, at p.48, note 40.
134. Supra, note 126.
135. See, supra, note 133, at p 14.
136. Rendell, supra, note 128, p 1243.
137. Supra, note 133, p 14.
138. Supra, note 127, Art 19(3)(a). See also, Art 3(1)(b).
139. See, id., Art 19(3).
140. See, eg., Grilli, supra, note 108, at p 87.
141. Supra, note 126.

142. Supra, note 127, Art. 3(2)(a).
143. Id., Art. 3(2)(b). The US Technical Analysis records the view that "we would not expect the Central Authority of either party to deny a request as a 'political offence' if it involves the kind of conduct listed in the Supplementary Treaty to the Extradition Treaty between the United States and the United Kingdom". Supra, note 133, pp.14-15, note 8. See also, Testimony, supra, note 119, p.142.
144. Supra, note 127, Art 3(3). For the view of the US on this provision see, supra, note 133, at pp.15-16. For the views of the Caymanian authorities see, supra, note 126.
145. Supra, note 127, Art. 3(2)(c).
146. See, Testimony, supra, note 119, at pp.122-123.
147. Supra, note 133, p.15.
148. Supra, note 126.
149. Supra, note 133, p 47.
150. Id., p.44. See also, statement of Principal Deputy Legal Adviser, Department of State, id., p.219, at pp.220-221.
151. Id., p.45. The Caymanian courts have declined to accept compelled consents of this kind. See, In the Matter of ABC Ltd., 1984 CILR 130; and Attorney-General v Bank of Nova Scotia 1985 CILR 418. On 22 June 1988 the US Supreme Court upheld the constitutionality of this procedure in a case concerning, in part, the Cayman Islands. See, Doe v US 108 S Ct 2341 (1988).
152. Supra, note 129, p.xi.
153. Supra, note 133, p.46.
154. Reproduced in (1987) 26 International Legal Materials, p.550.
155. Id., p.551.
156. See, eg., Nadelmann, supra, note 99, at p.57.
157. Cited, supra, note 131.
158. See, Protocol, supra, note 127.
159. It is understood that the problem was not with the Cayman Islands Treaty as such but with two of the other five MLATs then before the Senate in the same ratification "package": viz, Mexico and the Bahamas. See, eg. 101st Congress, 1st Session, Senate, Exec Rept No 101-8, at p 6.
160. Supra, note 3, para 9.

161. 1986 c.32 (UK). For an account of the disinclination of the UK to follow the US example in respect of civil forfeiture see, eg., M Zander, *Confiscation and Forfeiture Law: English and American Comparisons* (1989: Police Foundation, London), at pp.44-45.
162. Tackling Drug Misuse, supra, note 1, p.20. On 12 December 1989 the Minister of State, Home Office, informed the House of Lords that: "Confiscation orders have been made totalling more than £13 million, and more than £22 million has been restrained." Parl. Deb., H L, Vol. 513, No.13, col. 1230. Since that time a number of significant confiscation orders have been reported in the press. See, eg., "Mastermind of Drugs Plot Jailed for Fifteen Years" *The Independent* (London) 22 December, 1989; and "Bags of Cash Deposited in London Bank", *The Independent* (London) 16 December 1989. In 1988 the provisions of the CJA extended the attack on assets to those derived from other serious crimes. See generally, D Feldman, *Criminal Confiscation Orders: The New Law* (1988: Butterworths, London). In 1989 a further initiative was adopted in respect of the assets of terrorists. See, Prevention of Terrorism (Temporary Provisions) Act 1989, 1989 c.4 (UK).
163. 1987, c.41 (UK). The subject of enacting legislation similar to the CJA is currently under review in Scotland. See, Scottish Law Commission, *Forfeiture and Confiscation* (Discussion Paper No 82) (1989: HMSO, Edinburgh).
164. Supra, note 4, p.11.
165. Id., p.13. For the current position in the Cayman Islands see, Misuse of Drugs (Amendment) Law, 1988. Law 8 of 1988 (Cayman Islands); and Misuse of Drugs (Amendment) Law, 1989. Law 3 of 1989 (Cayman Islands). See also, supra, note 127, Art. 16. For the position in the Turks and Caicos Islands see, Control of Drugs (Trafficking) Ordinance 1988. Ordinance No.13 of 1988 (Turks and Caicos Islands). For an enactment outside of the Caribbean of great potential significance see, Drug Trafficking (Recovery of Proceeds) Ordinance 1989. Ordinance No.35/89 (Hong Kong). It is understood that final designation arrangements have been concluded with Anguilla, Bermuda and Gibraltar thus far.
166. Tackling Drug Misuse, supra, note 1, p.20. For an overview of the growing global practice in this regard see, eg., D McClean, Seizing the Proceeds of Crime: The State of the Art. (1989) 38 *International and Comparative Law Quarterly* p.334.
167. Agreement concerning the Investigation of Drug Trafficking Offences and the Seizure and Forfeiture of the Proceeds and Instrumentalities of Drug Trafficking, Cm 755 (1989).
168. Foreign and Commonwealth Office, Press Release, 9 February, 1988. Art. 1(2)(a) of the Agreement reads: "This Agreement shall apply: (a) in relation to the United Kingdom: to England and Wales, and subject to any necessary modifications, by agreement between the Parties embodied in an exchange of Notes, to Scotland and Northern Ireland and to any territories for the international relations of which the United Kingdom is responsible". The necessary domestic law designation in relation to England and Wales was provided by the Drug Trafficking Offences Act 1986 (United States of America) Order 1989. S I 1989 No. 485. See also, Parl. Deb., H C, Second Standing Committee on Statutory Instruments, 7 March 1989. Pursuant to Art. 14 of the Agreement it was brought into force on 11 April 1989. See, (1989) (June) *Department of State Bulletin* p.70. Press reports indicate that this Agreement was used by the United States in December 1989, following its military incursion in Panama, to freeze the UK based assets of General Noriega. See, "Noriega Sits Tight" *The Independent* (London) 29 December 1989. Similar co-operation has been

requested from other European governments. See, eg., "Nunciature Nine Surrender", The Independent (London), 28 December 1989.

169. See, May 1989 speech by the Home Secretary, supra, note 1, p.8. For the text of the Agreement with The Bahamas see, Cm 475 (1988). The Agreement with Nigeria is understood to break new ground in that it extends to the confiscation of the proceeds of crime generally and is not restricted to drug trafficking offences. See, Foreign and Commonwealth Office Press Conference, 18 September 1989 (unpublished: text provided by Foreign and Commonwealth Office). The most recent agreement, that with Sweden, also covers all serious crime. See, Foreign and Commonwealth Office, Press Release No 175, 14 December 1989.
170. See, id. See also, Parliamentary statement, supra, note 162, col. 524 and the 10 May 1989 evidence of Mr J Potts of the Home Office. H C Paper No.370-1, 1988-89, at p.14. Other arrangements, such as the United Kingdom/Brazil Drugs Agreement 1988, are somewhat less ambitious. It provides, in relevant part, as follows: "1. The two Governments, subject to the laws and regulations in force in their respective countries, propose to promote mutual co-operation to prevent the illicit production of, traffic in, and improper use of narcotic drugs and psychotropic substances, in accordance with the present Agreement, in the following fields: ... (d) exchange of information about the confiscation of goods obtained illicitly through traffic in drugs, as well as the examination of future complementary arrangements for reciprocal assistance in this field". Cm 769 (1989). It is understood that in March 1988 the UK concluded a Memorandum of Understanding with the Soviet Union on drugs related matters. The first substantive use of this procedure, Operation Diplomat, resulted in the breakup of the so-called Rose Organisation. See, eg., "Anglo-Soviet Inquiry Breaks Drug Ring", The Independent (London) 16 December 1989. The above initiatives are fully in accord with the Paris Economic Declaration of July 1989, supra, note 22, at p.17, where the participants, including the UK, resolved to "Conclude further bilateral or multilateral agreements and support initiatives and co-operation, where appropriate, which include measures to facilitate the identification, tracing, freezing, seizure and forfeiture of drug crime proceeds".
171. See, supra, note 167, Art. 13. It is understood that such negotiations are now under way.
172. Supra, note 130, p.6.
173. Criminal Justice (International Co-operation) Bill. H L Bill 11, 1989-90.
174. United Nations Treaty Series, Vol. 472, p.185.
175. For the text of the Commonwealth Scheme and an explanatory commentary thereon, see, eg., Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth (1989: Commonwealth Secretariat, London) Vol. 4, pp.1-51. See also, D McClean, Mutual Assistance in Criminal Matters: The Commonwealth Initiative (1988) 37 International and Comparative Law Quarterly p.177. A further impetus for mutual assistance is provided by the terms of Art.7 of the 1988 UN Convention. See, supra note 21.
176. Parl. Deb., H L, Vol. 513, No.13, 12 December 1989, col. 1217.
177. Supra, note 168.

178. It should be noted that the nature and extent of UK-US co-operation is kept under periodic review, in part through the UK/US High Level Steering Group on Drugs Co-operation which met for the first time in July 1987. See, Foreign and Commonwealth Office Press Release, 23 July 1987. The two governments also co-operate in the provision of drugs related assistance to third countries. See, eg., Memorandum of Understanding between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Drug Detector Dog Training for Third Countries (unpublished agreement signed in Washington DC on 29 March 1988: text provided by the Foreign and Commonwealth Office). The value of the provision of this service was specifically recorded in para 25 of the "Drugs Law Enforcement Conference Communique" following the conclusion of a 25 country regional conference held in Barbados 7-9 March 1988 (unpublished text provided by the Foreign and Commonwealth Office). For one analysis of the legal status of such a memorandum of understanding see, A Aust, The Theory and Practice of Informal International Instruments (1986) 35 International and Comparative Law Quarterly p.787. Further co-operation between the UK and USA is facilitated by the presence of drugs law enforcement specialists within the jurisdiction of the other. Thus the British Drugs Liaison Officer scheme extends to the US. The US "have DEA staff, Customs staff and an FBI representative in London". See, Memorandum Submitted by the National Drugs Intelligence Unit to the Home Affairs Committee, 12 July 1989, H C Paper No.370-II, 1988-89, p.115, at p.117, para 4.4. For a recent examination of the British experience in the use of such liaison officers see, the report of the Home Affairs Committee, supra, note 2, at para 159 - para 166.
179. Supra, note 176, col. 1217.
180. See, Part II of the Criminal Justice (International Co-operation) Bill, supra, note 173; and, Criminal Justice (International Co-operation) Bill: Amendments to be Moved in Committee. H L Bill 11(a), 1989-90 (19 December 1989). For example, in order to make appropriate provision for narcotics interdiction at sea within a Convention context the Bill as amended utilizes, in whole or in part, five clauses and a detailed Schedule. For a discussion, in lay terms, of the extent of the need for legislation in the UK see, HC Paper No 370-II, 1988-89, at pp.163-165.
181. Supra, note 176, col.1217.

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