CURRENT DEVELOPMENTS

PUBLIC INTERNATIONAL LAW

Edited by Colin Warbrick and Dominic McGoldrick*

I. Extradition and the European Union
II. The 1996 Protocol to the London Dumping Convention and the Issues Surrounding Dumping of the *Brent Spar*

I. EXTRADITION AND THE EUROPEAN UNION

To assist effective legal co-operation in combating criminal activity, the Justice and Home Affairs Council of the European Union has recently concluded two new conventions to simplify and improve extradition procedures between member States of the European Union.[1] In doing so, the Council set in motion a process whereby existing arrangements for extradition were examined with a view to making them more flexible.[2] In 1995 the Council recommended that the convention on simplified extradition be adopted in order to fulfil the aim of efficiency in the field of criminal justice. Its aim was to speed up extradition in cases where persons consented to be extradited. However, after further discussion concerning other aspects of extradition the Council eventually recommended that member States adopt far more radical procedures. The 1996 convention relating to "involuntary" extradition between member States appears to bypass several procedures designed to offer a degree of protection for the fugitive offender. Traditionally, extradition procedures have sought to offer a balance between judicial co-operation in the fight against crime and protecting the fundamental rights of the individual, and these concerns are acknowledged within the preambles to both the new EU conventions. However, the new conventions make several alterations to what can be regarded as established extradition procedures. In this article we examine these new procedures and consider whether the balance has shifted too far in favour of law enforcement at the expense of fundamental legal protections.

* This section deals with recent developments in British practice, making some attempt to set the practice against the international and domestic context in which it takes place.

1. Convention on Simplified Extradition Procedure between Member States of the European Union, adopted on 10 March 1995 (1995) O.J. C78/1 (the "1995 Convention"). Convention Relating to Extradition between the Member States of the European Union, adopted 27 Sept. 1996 (1996) O.J. C313/11 (the "1996 Convention").

2. Extradition in Europe is currently based largely on the European Convention on Extradition 1957, E.T.S. No.24 (the "1957 Convention") and its two Protocols of 1975 and 1978. Other arrangements have been formed under the Schengen Convention 1990 and regional agreements such as the Benelux Convention on Extradition and Judicial Assistance in Penal Matters 1962.

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A. The Process of Extradition: General Principles

Extradition is the formal process whereby a fugitive offender is surrendered to the State in which an offence was allegedly committed in order to stand trial or serve a sentence of imprisonment.[3] There is no general rule of international law that requires a State to surrender fugitive offenders and thus extradition arrangements proceed on the basis of a formal treaty or a reciprocal agreement between States.[4] The extradition process is "founded on the concepts of reciprocity, comity and respect for differences in other jurisdictions".[5] Thus, in *R.* v. *Governor of Pentonville Prison, ex parte Lee* Ognall J notes that the law of extradition proceeds upon "fundamental assumptions that the requesting state is acting in good faith and that the fugitive will receive a fair trial in the courts of the requesting state".[6] The procedure governing the granting of extradition is subject to national law. Some States will refuse to extradite their own nationals[7] and will apply extraterritorial jurisdiction.[8] Further, some States have adopted different rules with regard to the quality of the evidence required before agreeing to a request for extradition. Nevertheless, it is possible to identify general principles that form the basis of many extradition treaties. These principles may be regarded as established international norms. It has been suggested that these principles were designed to protect the integrity of the extradition process itself and, in addition, guarantee the fugitive offender a degree of procedural fairness.[9]

Traditionally, extradition proceedings have been reserved for persons who have allegedly committed a serious offence. Modern treaties adopt the practice of defining extraditable offences by reference to a minimum level of punishment.[10] Further, the principle of reciprocity, which lies at the heart of the extradition process, has resulted in most States complying with the double criminality principle.[11] Based on the maxim *nulla poena sine lege*, a request for extradition will be granted only if the conduct of the fugitive amounts to a crime in both the requesting and the requested States.[12] The requesting State is required to provide information that

3. See generally Shearer, *Extradition in International Law* (1971); Gilbert, *Aspects of Extradition Law* (1991); Bassiouni, *International Extradition: United States Law and Practice* (3rd edn, 1995).

4. The procedure known as "rendition" is sometimes used when fugitives are exchanged under a reciprocal agreement. This agreement may not amount to a formal treaty and may extend to non-extraditable offences. See generally Shearer, "Extradition without Treaty" (1975) 49 A.L.J. 116.

5. *Kindler* v. *Canada* (1991) 84 D.L.R. (4th) 438, 488.

6. [1993] 3 All E.R. 504, 509.

7. For a summary of the history of the non-extradition of nationals see Shearer, *op. cit. supra* n.3, at p.94.

8. According to the principle of active nationality a State has jurisdiction to try its own nationals for offences committed abroad. No State is required by international law to extradite its own nationals for offences committed abroad.

9. Gane and Nash, "Illegal Extradition: The Irregular Return of Fugitive Offenders" (1996) 1 S.L.P.Q. 277.

10. In the UK s.2(1) of the Extradition Act 1989 limits extradition to conduct "which if it occurred in the United Kingdom, would constitute an offence punishable with a term of imprisonment of 12 months, or any greater punishment and which, however described in the law of the foreign state ... is so punishable under that law".

11. See generally Shearer, *op. cit. supra* n.3, at chap.5.

12. However, in determining whether the conduct of the accused amounted to an extrad-

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enables the requested State to assess whether the principle of double criminality is satisfied. In the United Kingdom the principle of double criminality focuses attention on the alleged conduct of the fugitive and the level of punishment.[13]

Many extradition treaties require the requesting State to produce sufficient evidence to establish a *prima facie* case. However, the requesting State is the "sole arbiter"[14] of the quantity and quality of the evidence that it places before the court. Failure to produce sufficient evidence to satisfy the relevant domestic extradition legislation will result in the request being refused. Under the 1957 European Convention on Extradition member States are not required to furnish evidence of a *prima facie* case unless the requested State has entered a reservation to this effect. The removal of this requirement may ease the burden on the requesting State but it is still necessary to provide evidence enabling the requested State to decide whether the alleged conduct amounts to an extraditable offence. In extradition proceedings the requested State generally has no power to seek further evidence as a condition precedent to committal for extradition.[15] In extradition proceedings the requested State applies national rules when considering the admissibility of evidence.

In some circumstances States will refuse a request for extradition. Exemption from extradition generally provides the fugitive with some protection against unfairness; however, the rationale for exemption is often linked to the fact that extradition is still considered a sovereign act. The principle of specialty ensures that the requesting State will seek to prosecute and punish the offender only for the offence for which he was extradited. The requesting State must ensure that the fugitive is given the opportunity to leave the country before instituting criminal proceedings for any other offence.[16] Most extradition treaties provide for specialty and guarantees are usually required before extradition is granted. However, the regime in the requesting State may change. Thus, protection given by the specialty provisions is dependent upon political changes over which the requested State has no control.[17] The problem of re-extradition to a third State arises in relation to the specialty principle. This problem is addressed in Article 15 of the 1957 Conven-

itable offence the requested State has no jurisdiction to enquire into the substantive criminal law of the requesting State. Under Art.12(2)(b) of the 1957 Convention the requesting State is required to provide a legal description of the offence and the time and place of its commission.

13. G. Mullan, "The Concept of Double Criminality in the Context of Extraterritorial Crimes" [1997] Crim. 17; see generally M. Forde, *The Law of Extradition in the United Kingdom* (1995).

14. *R.* v. *Governor of Pentonville Prison and another, ex p. Lee* [1993] 3 All E.R. 504, 508.

15. *Ibid.*

16. Under Art.14 of the 1957 Convention a person has 45 days to leave before he can be charged with a new offence.

17. This issue has recently received attention in the UK and has become known as the "China point". The People's Republic of China (PRC) resumed sovereignty over Hong Kong on 1 July 1997. Hong Kong became a Special Administrative Region of China. Currently no member State has extradition arrangements with the PRC. Thus, there exists some uncertainty about the safeguards in the existing extradition arrangements continuing after the change in the political situation. In *R.* v. *Governor of Brixton Prison, ex p. Osman (No.3)* [1992] 1 All E.R. 122 the Divisional Court was of the opinion that section 6(4) of the 1989 Act was concerned with "situations which prevail not in the future but at the time".

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tion, which provides that a person should not be re-extradited to a third State without the consent of the requested State in respect of offences committed before surrender.[18]

Many extradition treaties acknowledge the principle of double jeopardy and include exemptions for persons who have already been tried and discharged or convicted and punished in another State. Article 9 of the 1957 Convention provides that extradition shall be refused if final judgment has been passed by the competent authorities of the requested State. Similarly, if there is an unreasonable delay in seeking extradition it is considered oppressive to agree to the request for extradition. Thus, many extradition treaties contain a provision that limits the return of fugitive offenders if it would be unjust or unfair by reason of time to do so.[19] Further, if an offence for which extradition is requested is punishable by death, some treaties contain provisions which permit the requested State to refuse extradition unless the requesting State gives assurances that the death penalty will not be carried out.[20]

If the requesting State seeks the return of a fugitive charged or convicted of an offence of a political character then extradition will be refused.[21] The political offence exception is a universally recognised principle of extradition law[22] and is related to the principle of sovereignty. It is justified by the need for States to remain detached from political conflict and protects the right of States to grant

Thus, in extradition proceedings in the UK under the 1989 Act it was not appropriate for the magistrate to consider the possible effects of a change of government. In *R.* v. *Governor of Pentonville Prison, ex p. Lee* [1993] 3 All E.R. 504 the applicant was also reluctant to return to Hong Kong, fearing that the protections in the current extradition arrangements would not survive the change of sovereignty. The court was of the opinion that to look into the future would "drive a coach and horse through the principle of comity and reciprocity which underlies the basis of extradition".

18. In *Bozano* v. *France* [1986] 9 E.H.R.R. 297 the applicant was convicted *in absentia* in Italy of serious crimes. Following his arrest in France, the Italian authorities sought his extradition. The French court refused to extradite him on the basis that French law did not allow extradition following a conviction *in absentia*. However, the French authorities deported him to Switzerland and the Swiss extradited him to Italy. There was no apparent irregularity in the extradition process between Switzerland and Italy. Provided there has been no collusion between the trial State and the State of refuge, this method of returning a fugitive offender does not seem to offend the Convention provisions.

19. Art.10 of the 1957 Convention provides that "extradition shall not be granted when the person claimed has, according to the law of either the requesting or the requested party, become immune by reason of lapse of time from prosecution or punishment". However, the UK reserved the right to exercise discretion and refuse to extradite only in appropriate circumstances.

20. See *idem*, Art.11. In *UK* v. *Soering* [1989] 11 E.H.R.R. 439 the European Court of Human Rights was of the opinion that the applicant's extradition to the US, where he could be placed on death row, gave rise to a violation of Art.3 of the European Convention on Human Rights. It was also noted in this case that in exceptional circumstances it would be appropriate to consider a violation of Art.6 where the fugitive had suffered or risked suffering a "flagrant denial" of a fair trial in the requesting State.

21. The scope of the political offence exception within member States of the Council of Europe has been reduced by the European Convention on the Suppression of Terrorism 1977, E.T.S. No.90, which lists a range of offences associated with terrorism which are precluded from being regarded as political offences.

22. See e.g. its inclusion in the UN Model Treaty on Extradition 1990, Art.3(a), where it is listed as a mandatory ground for the refusal of extradition.

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asylum to political refugees.[23] Its inclusion in extradition treaties offers some protection to fugitives from States seeking to use extradition to silence political opponents.[24] The requested State determines whether the offence amounts to an offence of a political nature following consideration of the evidence. This may involve analysing the motives of the requesting State to ensure the request for extradition is *bona fide*. Further, in determining whether an offence is political in character it has been considered appropriate to consider the purpose sought to be achieved by the offender in committing the offence.[25] Generally, extradition treaties do not define the term "political offence", which has presented the courts in many jurisdictions with considerable problems of interpretation.[26] There has been some consistency in the approach taken by courts in different jurisdictions to this problem and the phrase "offence of a political character" has been accepted as suggesting some opposition on the part of the fugitive to the requesting State. In the United Kingdom this interpretation has been further refined. Following the decision in *ex parte Dunlayici*,[27] to qualify as a political offence the fugitive's political purpose must be directed against the government of the requesting State and be linked to an existing or contemplated political struggle.

Most member States are prepared to exercise criminal jurisdiction over their nationals whether the offence was committed on their own territory or abroad.[28] This preference for trying the offender in his or her own State is acknowledged in Article 6 of the 1957 European Convention, which gives contracting parties the right to refuse extradition of nationals.[29] In the United Kingdom nationality is not a bar to extradition and arguments in favour of exempting nationals from surrender have consistently been rejected.[30] These opposing views are explained by the differing practice of the exercise of jurisdiction in member States. Refusal to extra-

23. Lauterpacht, "The Law of Nations and the Punishment of War Crimes" (1944) 21 B.Y.I.L. pp.58–95.

24. The justification for including the political offence exception in extradition treaties creates difficulties when trying to arrive at a satisfactory definition of "political offence". See Swart, "Human Rights and the Abolition of Traditional Principles", in Eser and Lagodny (Eds), *Principles and Procedures for a New Transnational Criminal Law* (1991), pp.505–534.

25. *R.* v. *Governor of Pentonville, ex p. Cheng* [1973] A.C. 931.

26. The courts in the UK have considered this problem on many occasions: see *Re Castioni* [1891] 1 Q.B. 149; *Re Meunier* [1894] 2 Q.B. 415; *R.* v. *Governor of Brixton Prison, ex p. Kolczynski* [1955] 1 Q.B. 540; *R.* v. *Governor of Brixton Prison, ex p. Schtraks* [1964] A.C. 556; *R.* v. *Governor of Pentonville, ex p. Cheng* [1973] A.C. 931; *T.* v. *Secretary of State for the Home Department* [1996] 2 All E.R. 865.

27. *The Times*, 22 August 1996.

28. The rationale for this exception to extradition is again linked to sovereignty and it has been criticised as being based on irrational grounds: see Swart, *op. cit. supra* n.24. Nevertheless, it is considered a fundamental right in some States and has been incorporated into the constitution of the Federal Republic of Germany.

29. To determine who may be classed as a national, reference should be made to the relevant law on nationality.

30. Recently in the UK the courts have been asked to consider whether a State that refuses to extradite its own nationals is entitled to seek the extradition of a national of another State. If extradition proceeds on the basis of reciprocity, a State may only need to fulfil an obligation to do what it would do itself. In *Re McAliskey* (*The Times*, 22 January 1997) the German government sought the extradition of a UK citizen. The court refused to accept the applicant's submission that the request should be refused on the basis that the German government would not extradite a German citizen to face trial in the UK. The court

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dite a national can limit the chances of bringing a successful prosecution against an offender who flees the country and may compromise the promotion of international co-operation of States in criminal matters.

B. Recent Developments

France suggested proposals for European judicial co-operation as long ago as 1977 to extend arrangements already established under the Council of Europe. However, these proposals were largely unsuccessful and in 1990 the EC Commission, in answer to a written question about the harmonisation of extradition arrangements, stated that there were still no plans for Community legislation in this area. Measures to co-ordinate extradition procedures, which were necessary to compensate for the removal of border controls, "would be greatly assisted if the Member States were to ratify the Council of Europe's European Convention of 1957 and its two protocols".[31] The European Ministers of Justice declared the improvement of extradition arrangements between EU States a priority[32] and a working group was established shortly after the Maastricht Treaty. The drafting of the EU conventions progressed quickly and the convention on simplified extradition was completed in March 1995. Discussions relating to more comprehensive developments proved to be more protracted; however, in September 1996 the convention relating to extradition between member States was drawn up.

C. The 1995 Convention on Simplified Extradition Procedure[33]

This Convention is intended to facilitate extradition between member States by supplementing the 1957 Convention. It is aimed at increasing the efficiency of current procedures without affecting the application of more favourable arrangements already in force in some member States. In cases where the arrested person consents to extradition and the requested State gives its agreement, formal extradition procedures are avoided. The Convention is designed to simplify extradition by providing a flexible legal framework among EU member States that reduces delays produced by the present systems. Provided the conditions of the Convention are complied with, contracting parties agree to apply the simplified provisions for surrender of fugitives. The simplified process begins once the request for provisional arrest is received or, if the Schengen Agreement applies, when a person was reported in the Schengen information system.[34] Adequate information should be communicated both to the fugitive and the requested State to enable them to consider the question of consent. This information should include the identity of the person sought and details of the offence. In cases of consent to extradition the Convention also provides for renunciation of the specialty rule.

found it impossible to construe the terms of the 1957 Convention in this way and appeared to accept that any lack of reciprocity did not act as a bar to extradition.

31. Joint answer to Written Questions Nos.1072 and 1236/90 (1990) O.J. C303/38.

32. Vermeulun and Vander Beken, "Extradition in the European Union: State of the Art and Perspectives" (1996) 4 European Journal of Crime, Criminal Law and Criminal Justice 200, 207–208.

33. *Supra* n.1.

34. Schengen Convention 1990, Art.96 (1991) 30 I.L.M. 68.

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The person wanted for the purpose of extradition must be informed of the simplified procedure and its consequences. To ensure that the arrested person was adequately informed and consent obtained voluntarily, he or she should have access to legal representation. Consent and renunciation of the right to specialty cannot be revoked and, thus, will be recorded formally in accordance with national procedures. If the arrested person consents to be extradited, the requested State must notify the requesting State so that a request for extradition can be submitted. However, notwithstanding the consent of the arrested person, once an arrest is effected, the request for extradition must be received within ten days. The requested State is required to consider the request in accordance with the usual national procedures.

Notification of the decision to extradite should be communicated directly between the competent State authorities and surrender of the fugitive must be within 20 days of the notification of the decision. In the event of unavoidable delay a new surrender date can be agreed; however, the person must be released after the expiry of this new date. In cases where the arrested person consents to extradition, the simplified procedure would be available. The new Convention is generally intended to apply to two types of case. The first type involves a request for provisional arrest, consent to extradition being obtained within ten days of arrest. In these cases the requested State has no other reason for detaining the fugitive. The other type of case would involve consent between 10 and 40 days after arrest but before a formal request for extradition under the 1957 Convention had been made.[35]

D. The 1996 Convention Relating to Extradition[36]

The 1996 Convention is also intended to supplement the 1957 Convention; however, it makes a number of adjustments to standard extradition procedure.[37] The preamble states that member States seek to improve judicial co-operation "with regard both to the prosecution and to the execution of sentences" and recognise the need for efficient extradition procedures in compliance with democratic standards and the European Convention on Human Rights. However, some of the preamble statements are not reflected in the substance of the Convention.

1. The range of extraditable offences

The 1957 Convention allows for extradition to be granted in respect of offences punishable with a term of imprisonment of at least one year under the law of the requesting and the requested States.[38] This threshold has been lowered by the 1996 Convention, which allows for extradition provided the offence attracts a term of imprisonment of at least one year under the law of the requesting State and at least six months in the requested State.[39] The twelve-month threshold in the 1957 Con-

35. See in general Select Committee on the European Communities (House of Lords), 17th Report, pp.27–32 (1996–97).

36. *Supra* n.1.

37. States need not have signed the 1957 Convention as a prerequisite to being a party to the 1996 Convention.

38. 1957 Convention, Art.2(1), subject to reservations; see Art.2(3) and (4).

39. 1996 Convention, Art.2(1).

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vention was designed to ensure that extradition was not used for minor offences. During the drafting of the 1996 Convention, two other options were examined, the retention of the status quo and the removal of the requirement for an imprisonment threshold in the requested State whilst maintaining the requirement that the offence should carry a custodial penalty in the requested State.[40] The practical benefit of this development is uncertain.[41]

2. *Conspiracy and association*

The 1996 Convention addresses a problem relating to the application of the double criminality rule between common law and civil law systems. Under Article 3 extradition will apply to offences which are considered by the requesting State to be offences of "conspiracy or an association to commit offences". The requirement is that the offence is punishable by a term of detention of at least 12 months, *and* that it is an offence referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism[42] *or* an offence "in the field of drug trafficking and other forms of organised crime or other [act] of violence against the life, physical integrity or liberty of a person, or creating a collective danger for persons".[43] Extradition may not be refused on the ground that the facts would not amount to an offence in the requested State. This provision is an attempt to seal a lacuna which exists at present.[44] The drafting of Article 3(1)(b) is noteworthy for its vagueness[45] and will require some member States to change their domestic law in order to ratify the Convention.

3. *The political offence exception*

The 1996 Convention provides member States with two options. Article 5(1) provides that "no offence may be regarded by the requested Member State as a political offence, as an offence connected with a political offence or an offence with political motives". Article 5(2) provides that member States may enter a reservation to Article 5(1) declaring that only offences, including conspiracy or association to commit offences, referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism will not be regarded as political offences, a substantial limitation. Article 5(4) states that reservations made by

40. Report to the Council (Justice and Home Affairs), 23 Mar. 1994. Doc.5366/94 JUSTPEN 13, p.4.

41. Two reasons given for needing to define extraditable offences are that the inefficiencies of extradition for minor offences are avoided along with the political problems caused by States refusing extradition on public policy grounds. Bassiouni has observed that the requirement of classifying an offence within a category of "extraditable offences" is curious. Why, he asks, subject to the offence meeting the requirements of double criminality and not being a political offence, should the requested State have a concern as to the seriousness of the offence? (*International Extradition and World Public Order* (1974), p.319.)

42. 1996 Convention, Art.3(1)(a).

43. *Idem*, Art.3(1)(b).

44. E.g. the rules relating to conspiracy to commit an offence are significantly different in the Netherlands from those in England and Wales.

45. What is the extent of offences "in the field of drug trafficking and other forms of organised crime"? Since there is no accepted legal definition of "organised crime" in the UK, one awaits the publication of the explanatory report to the 1996 Convention with interest.

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member States under Article 13 of the European Convention on the Suppression of Terrorism do not apply to extradition between member States.

4. Fiscal offences

Article 6 provides that extradition may be granted for fiscal offences. However, Article 6(3) allows any member State to declare that it will grant extradition in connection with a fiscal offence only where it relates to "acts or omissions which may constitute an offence in connection with excise, value-added tax or customs". This is in accordance with the approach adopted by the Schengen Convention.[46]

5. Extradition of nationals

The position of member States in relation to the extradition of their nationals is set out in Article 7. Extradition may not be refused on the ground that the accused is a national within the meaning of Article 6 of the 1957 Convention; however, Article 7(2) permits any member State to declare that it will not grant extradition of its nationals. Similarly, under the 1957 Convention, member States could enter a reservation in respect of the non-extradition of nationals.

6. Specialty

The principle of specialty has been modified in Article 10. Provided offences are not punishable by deprivation of liberty the requesting State is permitted to prosecute the fugitive for offences other than those for which the request for extradition was based. Further, if offences are punishable by deprivation of liberty, the accused can expressly waive the benefit of the rule of specialty. However, member States are expected to adopt "the measures necessary to ensure that this waiver is established in such a way as to show that the person has given it voluntarily and in full awareness of the consequences".[47] The approach adopted in Article 10 is fundamentally different from the 1957 Convention. Under Article 14(1)(a) of the 1957 Convention the specialty provision could be waived by the requested State. This development reflects a change in the status of individuals within the extradition process.[48]

7. Entry into force

Article 16(2) of the 1995 Convention and Article 18(3) of the 1996 Convention provide for entry into force 90 days after the last member State has notified the Council of their ratification. However, until the Conventions enter into force, any member State may declare that the Treaty "shall apply to its relations with Member States that have made the same declaration".[49] Such a system gives the Con-

46. Schengen Convention 1990, Art.63.
47. 1996 Convention, Art.10(3).
48. See Eser, "Common Goals and Different Ways in International Criminal Law, Reflections from a European Perspective" (1990) 31 Harv.Int.L.J. 125; Swart, *op. cit. supra* n.24.
49. 1995 Convention, Art.16(3); 1996 Convention, Art.18(4).

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ventions a "rolling ratification" and should mean that they become operational, albeit on a limited basis, sooner rather than later.[50]

E. Conclusion

The 1996 Convention represents a re-examination of the traditional restrictions on extradition. It effectively removes or reduces restrictions on the return of a fugitive offender. Some traditional limitations on extradition are concerned with protecting fundamental rights of the fugitive and prohibit extradition if a person is likely to be punished on account of race, religion, or ethnic origin, or where he or she might be subjected to torture, denied a fair trial or executed.[51] The preamble acknowledges that all the systems of government of the member States are based on democratic principles and comply with obligations laid down by the European Convention on Human Rights. However, there is no express obligation in the text to ensure that the new procedures conform to the human rights commitments contained within the European Convention on Human Rights or the International Covenant on Civil and Political Rights. The new procedures will undoubtedly improve legal co-operation between member States and increase the efficiency of existing extradition procedures. The question remains whether these developments will reduce to an unacceptable level the procedural guarantees that provide the fugitive with some protection from overzealous States.

MARK MACKAREL and SUSAN NASH*

II. THE 1996 PROTOCOL TO THE LONDON DUMPING CONVENTION AND THE *BRENT SPAR*†

IN November 1996 a special meeting of the contracting parties to the London Dumping Convention 1972 (LDC)[1] adopted a new Protocol.[2] The objective of the

50. The Council and some member States annexed a number of declarations to the Convention text, including adopting the dispute-settlement mechanism of Art.65 of the Vienna Convention on the Law of Treaties.

51. All these restrictions have received the tacit approval of the UN by way of their inclusion in the UN Model Treaty on Extradition: UN G.A.Res.45/116 of 14 Dec. 1990.

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† The Minister for the Environment announced substantial changes in the UK's policy on ocean dumping on 2 September 1997. An account of the changes will be given in a future section of Current Developments.

1. The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, London (1972) U.K.T.S. 43 (1976) Cmnd 6486.

2. Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, London 1996 (1997) 36 I.L.M. 1.

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