

MEMORANDUM BY THE HON. MINISTER OF COMMONWEALTH AND FOREIGN  
AFFAIRS AND BY THE HON. MINISTER OF JUSTICE AND PARLIAMENTARY  
AFFAIRS

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At the Meeting of Commonwealth Law Ministers held at Marlborough House, London, in April/May of last year, at which Malta was represented by the Crown Advocate General, a Scheme was agreed between the Commonwealth countries for the extradition of criminals between such countries.

The Scheme was discussed, elaborated and agreed with a view to each Commonwealth country enacting appropriate legislation to implement it.

In an Annex to the Scheme there is inserted a clause which gives every Commonwealth country the possibility to exclude by law, or to enable the competent executive authority to refuse, the return of a criminal if he is a citizen of the requested country or if he was born within that country or has any other connection therewith which determines his national status. But in such cases other Commonwealth countries, which have not excluded the extradition of their own nationals from the scope of their extradition law, are entitled to modify or adopt their own law for the purpose of ensuring reciprocity with the country which has provided for such exclusion.

The United Kingdom have forwarded to the Malta Government a copy of their legislation implementing the Scheme from which it emerges that they do not exclude the extradition of citizens of the United Kingdom to other Commonwealth countries. But, before making an Order-in-Council designating each Commonwealth country as a country in relation to which the provisions relating to extradition will operate, the Government of the United Kingdom would require to know which Commonwealth countries will exclude the extradition of their own citizens in order that the United Kingdom may apply their legislation in relation to any such country subject to the reciprocal limitation that the United Kingdom would not extradite their citizens to that country.

Although.../...

Although in many bilateral conventions on extradition there is a clause excluding the surrender of the citizens of the requested country and even the European Convention on Extradition gives that possibility, the Crown Advocate General is of the opinion that the Malta Government should not hesitate to grant in the appropriate cases the extradition of Citizens of Malta, in view of the fact that the Scheme under reference is hedged in with important safeguards intended to ensure that extradition is asked and granted really for the purpose of the prosecution and punishment of criminals and for no other purpose. The Crown Advocate General agrees with what the representative of New Zealand said when the subject was discussed at the Commonwealth Meeting, namely that "New Zealand (or any other country) would not want to retain within her borders untried criminals, whether they were her own citizens or not".

This is, however, a matter of policy on which the Hon. Members of the Cabinet are requested to give a decision in order that the British Government may be informed accordingly.

16th August, 1967.