

CHAPTER 135A

HIJACKING

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Hijacking.
3. Violence against passengers or crew.
4. Extradition.
5. Aircraft operated by joint air transport organisation or international operating agency.
6. Prosecution of offences.

SCHEDULE

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CHAPTER 135A

HIJACKING

An Act to make provision with a view to ratification on behalf of Barbados of the Convention for the suppression of unlawful seizure of aircraft and for related matters.

1973-2.
1979-21.
1994-18.

[3rd May, 1973] Commence-
ment.
1973/56.

1. This Act may be cited as the *Hijacking Act*.

Short title.

2. (1) Subject to subsection (2), a person on board an aircraft in flight who unlawfully, by the use of force or threats of any kind, seizes the aircraft or exercises the control of it commits the offence of hijacking, whatever his nationality, whatever the State in which the aircraft is registered, and whether the aircraft is in Barbados or elsewhere.

Hijacking.

(2) Subsection (1) shall not apply if

- (a) the aircraft is used in military, customs or police service; or
- (b) both the place of take-off and the place of landing are in the territory of the State in which the aircraft is registered,

unless

- (i) his act is committed in Barbados, or
- (ii) the aircraft is a Barbadian-controlled aircraft or is used in the military or customs service of Barbados or in the service of the Police Force.

(3) A person who

- (a) commits the offence of hijacking; or
- (b) in Barbados induces or assists in the commission elsewhere of an act which would, but for subsection (2), be the offence of hijacking,

is liable on conviction on indictment to imprisonment for life.

(4) For the purposes of this section

"Barbadian-controlled aircraft" and "operator" in relation thereto, have the same meanings as in section 2 of the *Civil Aviation (Tokyo Convention) Act*;

"military service" includes naval and airforce service.

(5) For the purposes of this section

(a) the period during which an aircraft is in flight includes

(i) any period from the moment when all external doors, if any, of the aircraft are closed following embarkation for a flight until the moment when any such door is opened for disembarkation after that flight; and

(ii) if the aircraft makes a forced landing, any period thereafter until the time when the competent authorities of the State in which that landing takes place take over responsibility for the aircraft and for the persons and property on board the aircraft (being, if that landing takes place in Barbados, the time when a member of the Police Force arrives at the place of landing);

(b) the territorial waters of any State shall be treated as part of its territory.

3. Without prejudice to section 4 of the *Civil Aviation (Tokyo Convention) Act*, where a person (of whatever nationality) does on board an aircraft (wherever registered) and while outside Barbados any act which if done in Barbados would constitute the offence of murder, attempted murder, manslaughter, culpable homicide or assault or an offence under section 16, 17, 18, 19, 22 or 23 of the *Offences Against the Person Act*, his act shall constitute that offence if it is done in connection with the offence of hijacking committed or attempted by him on board that aircraft.

4. (1) Subject to subsection (2), where no extradition treaty within the meaning of Part III of the *Extradition Act*, has been made with a State that is a party to the Convention and that State is not a Commonwealth country, Part I of that Act applies to that foreign state as if the Convention were such an extradition treaty with that state.

Violence
against
passengers
or crew.
Cap. 123B.

Cap. 141.
1994-18.

Extradition.
Cap. 189.
1979-21.

(2) When Part I of the *Extradition Act*, applies to a foreign state by virtue of this section, that Part has effect in respect of that foreign state as if the only extradition crimes within the meaning of that Act were offences under this Act and attempts to commit such offences.

Cap. 189.

(3) In this section, "Convention" refers to the Convention for the Suppression of Unlawful Seizure of Aircraft signed at The Hague on December 16th, 1970, the text of which is set out in the Schedule.

5. (1) If the Minister responsible for Civil Aviation by order declares

Aircraft operated by joint air transport organisation or international agency.

- (a) that any two or more States named in the order have established a joint air transport organisation or an international operating agency, which operates aircraft; and
- (b) that one of these States has been designated as exercising, for aircraft so operated, the powers of the State of registration,

the State declared under paragraph (b) shall be deemed for the purposes of this Act to be that State in which any aircraft so operated is registered.

(2) Paragraph (b) of section 2 (2) shall have effect in relation to aircraft to which this section applies as if it referred to the territory of any one of the States named in the order.

6. No proceedings for an offence under this Act shall be instituted except by or with the consent of the Director of Public Prosecutions.

Prosecution of offences.

SCHEDULE

s. 4(3).

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT

PREAMBLE

The States Parties to this Convention

Considering that unlawful acts of seizure or exercise of control of aircraft in flight jeopardize the safety of persons and property, seriously affect the

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operation of air services, and undermine the confidence of the peoples of the world in the safety of civil aviation;

Considering that the occurrence of such acts is a matter of grave concern;

Considering that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders;

Have Agreed as follows:

ARTICLE 1

Any person who on board an aircraft in flight:

- (a) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act, or
- (b) is an accomplice of a person who performs or attempts to perform any such act,

commits an offence (hereinafter referred to as "the offence").

ARTICLE 2

Each Contracting State undertakes to make the offence punishable by severe penalties.

ARTICLE 3

1. For the purposes of this Convention, an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation. In the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board.

2. This Convention shall not apply to aircraft used in military, customs or police services.

3. This Convention shall apply only if the place of take-off or the place of actual landing of the aircraft on board which the offence is committed is situated outside the territory of the State of registration of that aircraft; it shall be immaterial whether the aircraft is engaged in an international or domestic flight.

4. In the cases mentioned in Article 5, this Convention shall not apply if the place of take-off and the place of actual landing of the aircraft on board which the offence is committed are situated within the territory of the same State where that State is one of those referred to in that Article.

5. Notwithstanding paragraphs 3 and 4 of this Article, Articles 6, 7, 8 and 10 shall apply whatever the place of take-off or the place of actual landing of the aircraft, if the offender or the alleged offender is found in the territory of a State other than the State of registration of that aircraft.

ARTICLE 4

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offence and any other act of violence against passengers or crew committed by the alleged offender in connection with the offence, in the following cases:

- (a) when the offence is committed on board an aircraft registered in that State;
- (b) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;
- (c) when the offence is committed on board an aircraft leased without crew to a lessee who has his principal place of business or, if the lessee has no such place of business, his permanent residence, in that State.

2. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offence in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to any of the States mentioned in paragraph 1 of this Article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

ARTICLE 5

The Contracting States which establish joint air transport operating organisations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registration for the purpose of this Convention and shall give notice thereof to the International Civil Aviation Organisation which shall communicate the notice to all States Parties to this Convention.

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ARTICLE 6

1. Upon being satisfied that the circumstances so warrant, any Contracting State in the territory of which the offender or the alleged offender is present, shall take him into custody or take other measures to ensure his presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary enquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.

4. When a State, pursuant to this Article, has taken a person into custody, it shall immediately notify the State of registration of the aircraft, the State mentioned in Article 4, paragraph 1 (c), the State of nationality of the detained person and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

ARTICLE 7

The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

ARTICLE 8

1. The offence shall be deemed to be included as an extraditable offence in any extradition treaty existing between Contracting States. Contracting States undertake to include the offence as an extraditable offence in every extradition treaty to be concluded between them.

2. If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offence. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. Contracting States which do not make extradition conditional on the existence of a treaty shall recognise the offence as an extraditable offence between themselves subject to the conditions provided by the law of the requested State.

4. The offence shall be treated, for the purpose of extradition between Contracting States, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with Article 4 paragraph 1.

ARTICLE 9

1. When any of the acts mentioned in Article 1 (a) has occurred or is about to occur, Contracting States shall take all appropriate measures to restore control of the aircraft.

2. In the cases contemplated by the preceding paragraph, any Contracting State in which the aircraft or its passengers or crew are present shall facilitate the continuation of the journey of the passengers and crew as soon as practicable, and shall without delay return the aircraft and its cargo to the persons lawfully entitled to possession.

ARTICLE 10

1. Contracting States shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offence and other acts mentioned in Article 4. The law of the State requested shall apply in all cases.

2. The provisions of paragraph 1 of this Article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

ARTICLE 11

Each Contracting State shall in accordance with its national law report to the Council of the International Civil Aviation Organisation as promptly as possible any relevant information in its possession concerning:

- (a) the circumstances of the offence;
- (b) the action taken pursuant to Article 9;
- (c) the measures taken in relation to the offender or the alleged offender, and, in particular, the results of any extradition proceedings or other legal proceedings.

ARTICLE 12

1. Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound

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by the preceding paragraph. The other Contracting States shall not be bound by the preceding paragraph with respect to any Contracting State having made such a reservation.

3. Any Contracting State having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary Governments.

ARTICLE 13

1. This Convention shall be open for signature at The Hague on 16th December 1970, by States participating in the International Conference on Air Law held at The Hague from 1 to 16 December 1970 (hereinafter referred to as The Hague Conference). After 31 December 1970, the Convention shall be open to all States for signature in Moscow, London and Washington. Any State which does not sign this Convention before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.

2. This Convention shall be subject to ratification by the signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, which are hereby designated the Depositary Governments.

3. This Convention shall enter into force thirty days following the date of the deposit of instruments of ratification by ten States signatory to this Convention which participated in The Hague Conference.

4. For other States, this Convention shall enter into force on the date of entry into force of this Convention in accordance with paragraph 3 of this Article, or thirty days following the date of deposit of their instruments of ratification or accession, whichever is later.

5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of entry into force of this Convention, and other notices.

6. As soon as this Convention comes into force, it shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

ARTICLE 14

1. Any Contracting State may denounce this Convention by written notification to the Depositary Governments.

2. Denunciation shall take effect six months following the date on which notification is received by the Depositary Governments.