
 STATUTORY INSTRUMENTS

1971 No. 2102

FUGITIVE CRIMINAL

The Extradition (Hijacking) Order 1971

Made - - - - 22nd December 1971
Laid before Parliament 31st December 1971
Coming into Operation 21st January 1972

At the Court at Buckingham Palace, the 22nd day of December 1971

Present,

The Queen's Most Excellent Majesty in Council

Whereas the Convention for the Suppression of Unlawful Seizure of Aircraft (hereinafter referred to as "the Convention") signed at The Hague on 16th December 1970, the terms of which are set out in Schedule 1 to this Order, will enter into force for the United Kingdom on 21st January 1972:

And Whereas the States mentioned in Schedule 2 to this Order are foreign States in respect of which the Convention is for the time being in force and with which extradition arrangements are in force:

And Whereas the States mentioned in Part I of Schedule 3 to this Order are foreign States in respect of which the Convention is for the time being in force but with which no extradition arrangements are in force:

And Whereas section 3(2) of the Hijacking Act 1971(a) provides that where no such arrangement as is mentioned in section 2 of the Extradition Act 1870(b) has been made with a State which is a party to the Convention, an Order in Council applying that Act may be made under that section as if the Convention were such an arrangement with that State:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by sections 2 and 17 of the Extradition Act 1870 and sections 3(2) and 6(1) of the Hijacking Act 1971, or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Extradition (Hijacking) Order 1971 and shall come into operation on 21st January 1972.

2.—(1) In this Order any references to the Extradition Acts and to the Act of 1870 are, respectively, references to the Extradition Acts 1870 to 1935 and to the Extradition Act 1870, as amended or extended by any subsequent enactment.

(2) The Interpretation Act 1889(c) shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

 (a) 1971 c. 70.

(b) 1870 c. 52.

(c) 1889 c. 63.

3. The Extradition Acts shall apply in the case of a State mentioned in Schedule 2 to this Order under and in accordance with the extradition treaties described in the second column of that Schedule as supplemented by paragraphs 1 and 4 of Article 8 of the Convention (set out in Schedule 1 to this Order), which entered into force for those States on the dates specified in the third column of the said Schedule 2.

4. The Extradition Acts shall apply in the case of the States mentioned in Part I of Schedule 3 to this Order (being States in respect of which the Convention entered into force on the dates specified in the second column of that Schedule) subject to the conditions contained in, and in accordance with, Part II of that Schedule.

5. The operation of this Order is limited to the United Kingdom, the Channel Islands, the Isle of Man and the territories specified in Schedule 4 to this Order, being territories to which the application of the Convention is extended.

W. G. Agnew.

Article 3

SCHEDULE 1

THE CONVENTION

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 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 organizations 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 Organization which shall communicate the notice to all States Parties to this Convention.

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 recognize 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 to its lawful commander or to preserve his 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 organisation 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 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 16 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 Depository 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 Depository 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 Depository Governments.

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

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorised thereto by their Governments, have signed this Convention.

DONE at The Hague, this sixteenth day of December, one thousand nine hundred and seventy, in three originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish languages.

Article 3

SCHEDULE 2

FOREIGN STATES WHICH ARE PARTIES TO THE CONVENTION AND WITH WHICH EXTRADITION TREATIES ARE IN FORCE

State	Date of Extradition Treaty	Date of Entry into force of Convention for the State concerned
Ecuador	20th September 1880	14th October 1971
Hungary	3rd December 1873	14th October 1971
Israel	4th April 1960	14th October 1971
Norway	26th June 1873	14th October 1971
Sweden	26th April 1963	14th October 1971
Switzerland	{ 26th November 1880 19th December 1934	} 14th October 1971
United States of America ...	22nd December 1931	14th October 1971

SCHEDULE 3

Article 4

PART I

FOREIGN STATES WHICH ARE PARTIES TO THE CONVENTION AND WITH WHICH
NO EXTRADITION TREATIES ARE IN FORCE

State	Date of Entry into force of Convention for the State concerned
Bulgaria	14th October 1971
Costa Rica	14th October 1971
Gabonese Republic	14th October 1971
Japan	14th October 1971
Jordan	16th December 1971
Mali	14th October 1971
Mongolia	7th November 1971
Niger	14th November 1971
Union of Soviet Socialist Republics	24th October 1971

PART II

APPLICATION OF THE EXTRADITION ACTS IN THE CASE OF THE
STATES MENTIONED IN PART I

1. The Extradition Acts shall have effect as if the only extradition crimes within the meaning of the Act of 1870 were offences under the Hijacking Act 1971 and attempts to commit such offences.
2. The Extradition Acts shall only apply where the case is such that paragraphs 2 and 4 of Article 8 of the Convention apply.
3. No proceedings shall be taken on an application by information or complaint, for a provisional warrant of arrest (that is to say, a warrant issued under section 8 of the Act of 1870 otherwise than in pursuance of sub-paragraph 1 of the first paragraph thereof), and no such warrant shall be issued, unless the application is made with the consent of the Secretary of State signified by an order in the form set out in Part III of this Schedule or in a form to the like effect; but, subject as aforesaid, the signification of consent shall not affect the provisions of the said section 8.
4. Without prejudice to sections 3, 9 and 11 of the Act of 1870, the fugitive criminal shall not be surrendered if—
 - (a) it appears to the Secretary of State, to the magistrate hearing the case in pursuance of section 9 of that Act or to the High Court on an application for a writ of habeas corpus—
 - (i) that the request for his surrender (though purporting to be made on account of such an offence as is mentioned in paragraph 1 above) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions, or

- (ii) that he might, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions, or
 - (iii) that if charged in England or Wales with the offence of which he is accused he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction ; or
- (b) it appears to the Secretary of State or to the High Court on an application for a writ of habeas corpus that—
- (i) by reason of the passage of time since the fugitive criminal is alleged to have committed the offence of which he is accused or to have become unlawfully at large, or
 - (ii) because the accusation against him is not made in good faith in the interests of justice,
- it would, having regard to all the circumstances, be unjust or oppressive to surrender him.

5.—(1) Without prejudice to his so deciding on other grounds, the Secretary of State may, in the circumstances mentioned in the following sub-paragraph, decide not to make an order or issue a warrant—

- (a) for the purposes of paragraph 3 above signifying his consent to an application for a provisional warrant of arrest, or
- (b) under section 7 of the Act of 1870 requiring the issue of a warrant of arrest, or
- (c) under section 11 of the Act of 1870 ordering the fugitive criminal to be surrendered.

(2) The circumstances referred to in the preceding sub-paragraph are—

- (a) that the Secretary of State is not satisfied that provision is made by the law of the State requesting surrender under which a person accused or convicted in the United Kingdom of the like offence as that with which the fugitive criminal is accused or convicted might be surrendered to the United Kingdom if found in that State, or
- (b) that under the law of the State requesting surrender the fugitive criminal is liable to the death penalty for the offence of which he is accused, or
- (c) that the fugitive criminal is a citizen of the United Kingdom and Colonies.

PART III

FORM OF CONSENT OF SECRETARY OF STATE TO APPLICATION FOR A PROVISIONAL WARRANT OF ARREST

Whereas AB, a person recognised by the Secretary of State as a diplomatic representative of, has requested consent to application being made for the issue of a provisional warrant for the arrest of CD, late of, who is [accused] [convicted] of the commission of an offence, or attempt to commit an offence, within the jurisdiction of the said State, being an offence which, if committed in England, would be an offence under the Hijacking Act 1971:

Now I hereby, by this my Order under my hand and seal, signify to you my consent to the said application being made.

Given under the hand and seal of the undersigned, one of Her Majesty's
Principal Secretaries of State this day of 19 .

SCHEDULE 4

Article 5

TERRITORIES TO WHICH THE APPLICATION OF THE CONVENTION IS EXTENDED

Bahamas.
Bermuda.
British Antarctic Territory.
British Honduras.
British Indian Ocean Territory.
British Solomon Islands Protectorate.
British Virgin Islands.
Cayman Islands.
Central and Southern Line Islands.
Falkland Islands (and Dependencies).
Gibraltar.
Gilbert and Ellice Islands Colony.
Hong Kong.
Montserrat.
Pitcairn, Henderson, Ducie and Oeno Islands.
St. Helena (and Dependencies).
Seychelles.
Sovereign Base Areas of Akrotiri and Dhekelia.
Turks and Caicos Islands.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order applies the Extradition Acts 1870 to 1935, as amended, so as to make the offence of hijacking extraditable in the case of States party to the Convention for the Suppression of Unlawful Seizure of Aircraft signed at the Hague on 16th December 1970.