

1973 No. 1756

FUGITIVE CRIMINAL**The Extradition (Protection of Aircraft) Order 1973**

<i>Made - - - -</i>	<i>24th October 1973</i>
<i>Laid before Parliament</i>	<i>30th October 1973</i>
<i>Coming into Operation</i>	<i>24th November 1973</i>

At the Court at Buckingham Palace, the 24th day of October 1973

Present,

The Queen's Most Excellent Majesty in Council

Whereas the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (hereinafter referred to as "the Convention") signed at Montreal on 23rd September 1971, the terms of which are set out in Schedule 1 to this Order, will enter into force for the United Kingdom on 24th November 1973:

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 5(2) of the Protection of Aircraft Act 1973(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 5(2) and 27(1) of the Protection of Aircraft Act 1973, 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 (Protection of Aircraft) Order 1973 and shall come into operation on 24th November 1973.

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) 1973 c. 47.

(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.

W. G. Agnew.

SCHEDULE 1

THE CONVENTION

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF CIVIL AVIATION

THE STATES PARTIES TO THIS CONVENTION

CONSIDERING that unlawful acts against the safety of civil aviation 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

1. Any person commits an offence if he unlawfully and intentionally:
 - (a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft ; or
 - (b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight ; or
 - (c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight ; or
 - (d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight ; or
 - (e) communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight.
2. Any person also commits an offence if he :
 - (a) attempts to commit any of the offences mentioned in paragraph 1 of this Article ; or
 - (b) is an accomplice of a person who commits or attempts to commit any such offence.

ARTICLE 2

For the purposes of this Convention :

- (a) 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 ;
- (b) an aircraft is considered to be in service from the beginning of the preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing ; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight as defined in paragraph (a) of this Article.

ARTICLE 3

Each Contracting State undertakes to make the offences mentioned in Article 1 punishable by severe penalties.

ARTICLE 4

1. This Convention shall not apply to aircraft used in military, customs or police services.
2. In the cases contemplated in subparagraphs (a), (b), (c) and (e) of paragraph 1 of Article 1, this Convention shall apply, irrespective of whether the aircraft is engaged in an international or domestic flight, only if :
 - (a) the place of take-off or landing, actual or intended, of the aircraft is situated outside the territory of the State of registration of that aircraft ; or
 - (b) the offence is committed in the territory of a State other than the State of registration of the aircraft.
3. Notwithstanding paragraph 2 of this Article, in the cases contemplated in subparagraphs (a), (b), (c) and (e) of paragraph 1 of Article 1, this Convention shall also apply if the offender or the alleged offender is found in the territory of a State other than the State of registration of the aircraft.
4. With respect to the States mentioned in Article 9 and in the cases mentioned in subparagraphs (a), (b), (c) and (e) of paragraph 1 of Article 1, this Convention shall not apply if the places referred to in subparagraph (a) of paragraph 2 of this Article are situated within the territory of the same State where that State is one of those referred to in Article 9, unless the offence is committed or the offender or alleged offender is found in the territory of a State other than that State.
5. In the cases contemplated in subparagraph (d) of paragraph 1 of Article 1, this Convention shall apply only if the air navigation facilities are used in international air navigation.
6. The provisions of paragraphs 2, 3, 4 and 5 of this Article shall also apply in the cases contemplated in paragraph 2 of Article 1.

ARTICLE 5

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offences in the following cases :
 - (a) when the offence is committed in the territory of that State ;
 - (b) when the offence is committed against or on board an aircraft registered in that State ;
 - (c) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board ;

(d) when the offence is committed against or 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 offences mentioned in Article 1, paragraph 1 (a), (b) and (c), and in Article 1, paragraph 2, in so far as that paragraph relates to those offences, 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 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 States mentioned in Article 5, paragraph 1, of 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 offences shall be deemed to be included as extraditable offences in any extradition treaty existing between Contracting States. Contracting States undertake to include the offences as extraditable offences 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 offences. 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 offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Each of the offences 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 5, paragraph 1 (b), (c) and (d).

ARTICLE 9

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

ARTICLE 10

1. Contracting States shall, in accordance with international and national law, endeavour to take all practicable measures for the purpose of preventing the offences mentioned in Article 1.

2. When, due to the commission of one of the offences mentioned in Article 1, a flight has been delayed or interrupted, any Contracting State in whose territory the aircraft or 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 11

1. Contracting States shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences. 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 12

Any Contracting State having reason to believe that one of the offences mentioned in Article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States which it believes would be the States mentioned in Article 5, paragraph 1.

ARTICLE 13

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

- (a) the circumstances of the offence ;
- (b) the action taken pursuant to Article 10, paragraph 2 ;
- (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 14

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 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 15

1. This Convention shall be open for signature at Montreal on 23 September 1971, by States participating in the International Conference on Air Law held at Montreal from 8 to 23 September 1971 (hereinafter referred to as the Montreal Conference). After 10 October 1971, 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 Montreal 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 16

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.

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

DONE at Montreal, this twenty-third day of September, one thousand nine hundred and seventy-one, in three originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish languages.

SCHEDULE 2

Article 3

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
CZECHOSLOVAKIA	11 November 1924	9 August 1973
DENMARK	31 March 1873	16 February 1973
FINLAND	30 May 1924	12 August 1973
HUNGARY... ..	3 December 1873	26 January 1973
ICELAND	31 March 1873	29 July 1973
ISRAEL	4 April 1960	26 January 1973
NETHERLANDS	26 September 1898	26 September 1973
NORWAY	26 June 1873	31 August 1973
PANAMA	25 August 1906	26 January 1973
PORTUGAL	17 October 1892	14 February 1973
SPAIN	4 June 1878	26 January 1973
SWEDEN	26 April 1963	9 August 1973
UNITED STATES OF AMERICA ...	22 December 1931	26 January 1973
YUGOSLAVIA	6 December 1900	26 January 1973

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
BRAZIL	26 January 1973
BULGARIA	24 March 1973
CAMEROON	10 August 1973
CHAD	26 January 1973
GERMAN DEMOCRATIC REPUBLIC ...	26 January 1973
IRAN	9 August 1973
IVORY COAST	8 February 1973
JORDAN... ..	15 March 1973
KOREA, REPUBLIC OF	31 August 1973
MALI	26 January 1973
MONGOLIA	26 January 1973
NIGER	26 January 1973
PHILIPPINES	25 April 1973
SOUTH AFRICA... ..	26 January 1973
UNION OF SOVIET SOCIALIST REPUBLICS ...	21 March 1973

PART II

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

1. The Extradition Acts shall hereby have effect as if the only extradition crimes within the meaning of the Act of 1870 were offences under Part I of the Protection of Aircraft Act 1973 and attempts to commit such offences.

2. The Extradition Acts shall hereby 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 Part I of the Protection of Aircraft Act 1973.

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 THIS ORDER EXTENDS

BELIZE

BERMUDA

BRITISH ANTARCTIC TERRITORY

BRITISH INDIAN OCEAN TERRITORY

BRITISH VIRGIN ISLANDS

CAYMAN ISLANDS

FALKLAND ISLANDS (COLONY AND DEPENDENCIES)

GIBRALTAR

GILBERT AND ELLICE ISLANDS COLONY

HONG KONG

MONTSERRAT

PITCAIRN, HENDERSON, DUCIE AND OENO ISLANDS

ST. HELENA (COLONY 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 extraditable the offences against the safety of aircraft created by Part I of the Protection of Aircraft Act 1973 and attempts to commit such offences, in the case of States party to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23rd September 1971.

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