

Implementation Kits for the International Counter-Terrorism Conventions

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PREFACE

The concept of the ‘implementation kit’ is a DIY manual for Governments that are interested in becoming parties to selected multilateral treaties, and designed to help the process by providing their legal advisers with a commentary on the treaties, and model Bills. The concept was developed by Professor David McClean (of the University of Sheffield) and Professor Keith Patchett (formerly of the University of Wales Institute of Science & Technology), in conjunction with the Commonwealth Secretariat.

A series of such kits has been, and will continue to be, produced. But hitherto these have been confined largely to the field of Private International Law.

A kit for the first three aviation security conventions (‘convention’ being merely one of the many names by which treaties are called) was prepared by David Lloyd Jones QC and first published in 1982. It was revised by him in 1989 to take account of later developments, in particular the adoption of the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving Civil Aviation 1988. Also, in 1989 a kit on the International Convention against the Taking of Hostages 1979 was prepared by Edward M. Morgan ([then of the University of Toronto]).

The present publication covers all twelve multilateral treaties drawn up between 1963 and 1999 by the United Nations, and other international organisations of a universal character, in response to the scourge of terrorism. It therefore has commentaries and model laws for seven of the treaties that had not been covered before. It also revises the commentaries on the first five, and seeks to bring consistency of style between the twelve commentaries. Because the treaties span 36 years, the Introduction has been expanded to give an overview of them and describe some of their most important common elements.

The Introduction and the new and revised commentaries have been done by Anthony Aust CMG, who was Deputy Legal Adviser of the Foreign and Commonwealth Office until this year, and is presently Visiting Professor of International Law at University College, London and a consultant on public international law and constitutional law. The model bills were drafted by Nalin Abeysekere.

Both of them wish to thank Ms Kimberly Prost, Head of the Criminal Law Unit of the Legal and Constitutional Affairs Division of the Commonwealth Secretariat, for her invaluable guidance and support in bringing this important project to completion.

Anthony Aust

ABBREVIATIONS

AJIL	American Journal of International Law
Aust	A. Aust, <i>Modern Treaty Law and Practice</i> (Cambridge, 2000)
IAEA	International Atomic Energy Agency
ICAO	International Civil Aviation Organisation
ICLQ	International and Comparative Law Quarterly
ICRC	International Committee of the Red Cross
ILC	International Law Commission
ILM	<i>International Legal Materials</i> (published by the American Society of International Law)
Lambert	J. Lambert, <i>Terrorism and Hostages in International Law</i> (Grotius, Cambridge, 1990)
UKTS	United Kingdom Treaty Series
UNCLOS	United Nations Convention on the Law of the Sea 1982
UNTS	United Nations Treaty Series

WEBSITES

www.iaea.org
www.icao.int
www.imo.org
www.un.org (see in particular ‘UN Action on Terrorism’)

CHAPTER ONE

INTRODUCTION

'Fifty years ago the idea that aircraft might become a field for the application of the Criminal Law would have seemed fanciful. Even thirty years ago our legislators would have thought it premature to contemplate legislation on the subject. A dozen or so people, probably all men, flying together for an hour or two in conditions of discomfort would hardly have had either the opportunity or the vitality to be otherwise than law-abiding. But now we have one to 200 people flying together, commonly for four to seven hours, at times for 12 to 15 hours. They fly in conditions of security and comfort (*sic*). They have room to move about (*sic*). They include both sexes. They are plentifully supplied with alcoholic stimulants and the purely statistical chances of abnormal behaviour are obviously greatly increased. Moreover, aircraft pass rapidly over frontiers which on land may be carefully controlled. They offer great opportunities for the transfer from one country to another, possibly a thousand miles or more away, of commodities for which a high price will be paid and which cannot pass to their most profitable market by land or sea: things such as gold, drugs, diamonds, secret plans and designs. It is very tempting for passengers on these aircraft and for their crews to undertake or lend themselves as accessories to these trades. So crimes may be committed on aircraft and aircraft may be used for unlawful activities.'¹

1. Lord Wilberforce, as he later became, was writing in 1963 about 'ordinary' crimes committed on aircraft and the legal complications they were producing. Soon, further problems were to arise with the advent of widespread and persistent terrorist crimes against aircraft. Although terrorism today now takes many forms, it was terrorist attacks against civil aircraft, particularly hijacking, which prompted States to begin to devise means to prevent terrorist crimes and bring terrorists to justice. We will therefore begin by outlining the history of the twelve universal² counter-terrorism treaties – seven 'Conventions', three 'International Conventions' and two 'Protocols' (hereinafter, simply, 'conventions'),³ and explaining some of their most important common features. The conventions are:

Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963 ('Tokyo Convention')

Convention for the Suppression of Unlawful Seizure of Aircraft, 1970 ('Hague Convention')

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971 ('Montreal Convention')

Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Montreal Convention, 1988 ('Montreal Protocol')⁴

¹ R. Wilberforce: 'Crime in Aircraft' (1963) 67 *Journal of the Royal Aeronautical Society*, p. 175.

² 'Universal' does not mean that all States are bound by them, merely that they are open to all States in the hope that all States will eventually become bound by them.

³ 'Treaty' is the generic term, and some treaties are even called 'Treaty', but the most common names are Agreement, Convention and Protocol. 'International Convention' is just another name; they are all international.

⁴ Although adopted long after the Montreal Convention, since it is intimately linked to the Convention, the Protocol will be discussed immediately after the Convention.

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973 ('Diplomats Convention')

Convention on the Physical Protection of Nuclear Material, 1979 ('Nuclear Convention')

International Convention against the Taking of Hostages, 1979 ('Hostages Convention')

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 ('Rome Convention')

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988 (Rome Protocol')

Convention on the Marking of Plastic Explosives, 1991 ('Explosives Convention')

International Convention for the Suppression of Terrorist Bombings, 1997 ('Bombings Convention')

International Convention for the Suppression of the Financing of Terrorism, 1999 ('Financing Convention').

The terrorist threat

2. States focused first on attacks on air travel. Since the passage quoted at the start of this chapter was written forty years ago, the notion of crime on board aircraft has become all too familiar. The vast expansion in the volume of international air traffic greatly increased the incidence of criminal conduct on board aircraft, including that late 20th century phenomenon, 'air rage'. Moreover, aircraft are no longer merely the stage for criminal activities; they have become their target, and on 11 September 2001, the very means itself. The unlawful seizure of aircraft, happily less today, was once commonplace. The very nature of international travel by air - the carriage of large numbers of persons in a confined space, through the territorial airspace of many States and outside the territory of any State, on board aircraft purchased at enormous expense - renders aircraft, their passengers and crews particularly susceptible to terrorist and other criminal activities. Furthermore, the easy mobility of aircraft may enable hijackers to escape to a State whose government is sympathetic to their cause, or just spineless, thereby evading arrest and punishment. Until 2001 perhaps the most frightful development had been politically-motivated sabotage of large airliners resulting in their destruction and great loss of life. Today, the dangers from all forms of terrorism remain fearfully great. In concluding several multilateral treaties to combat terrorist activities States have had to overcome the legal difficulties which inevitably arise when the interests of a large number of States are actually or potentially involved.

The sectoral, segmental or incremental approach

3. Because of the continuing lack of international agreement on a definition of terrorism, it has not been possible to adopt a treaty covering all its forms.⁵ Each of the conventions therefore focuses on a particular form of terrorism which States regard as unacceptable because, irrespective of who commits them or their reasons, they involve acts so evil that no State was brave, or unwise, enough to seek to justify them, at least on the international legal stage. Ten of the conventions deal with the prosecution of terrorist offences. The other two are usually included and so make up the twelve. The Tokyo Convention is included even though it has more to do with filling the jurisdictional gaps which used to exist over crimes

⁵ A proposed Comprehensive Convention on Terrorism is still being negotiated in the United Nations, but the discussions are beset by political problems, in particular how to define terrorism.

committed on board aircraft. It is included more because one provision (Article 11) deals with hijacking, and some other provisions were later used as the basis for provisions of the terrorism conventions proper. The Explosives Convention has no penal provisions, but is included because it is significant for the prevention of terrorism.

4. The principal purpose of this publication is to examine the *legal* problems which call for international action, and to explain the ways in which the conventions attempt to solve them.

Jurisdictional problems

5. The basic problem encountered when seeking to regulate conduct, and especially criminal conduct, on board an aircraft or ship, or otherwise, is one of jurisdiction. It is therefore convenient to consider first the nature of criminal jurisdiction and the different senses in which the term is employed. There are three different concepts⁶

- (i) Prescriptive jurisdiction: the power of a State to make legal rules;
- (ii) Enforcement jurisdiction: the power of a State to enforce legal rules by executive action;
- (iii) Judicial jurisdiction: the power of the courts of a State to apply legal rules and punish their contravention.

Enforcement jurisdiction is almost exclusively restricted to the territory of the State, since generally no State may enforce its laws outside its territory, or against the ships or aircraft of another State, without consent. Prescriptive jurisdiction, which defines the ambit of the criminal law of a State and its power to characterize conduct as lawful or unlawful, is not so limited and there are many examples of States prescribing rules for the conduct of their nationals abroad. In practice, prescriptive jurisdiction will often be closely bound up with questions of judicial jurisdiction. In considering whether a court can exercise criminal jurisdiction in a particular case one must find out whether the conduct constitutes an offence contrary to the law of the State (see also paragraph 10 below).

6. The exercise of criminal jurisdiction by States is often explained in terms of certain factors that link the conduct and the State exercising jurisdiction. Common law systems generally claim to prescribe and enforce criminal law on grounds of *territoriality* i.e. the conduct took place in the territory of the State. For this purpose, vessels and aircraft registered in a State are often assimilated to the territory of that State. But, territorial jurisdiction may also be exercised under the *subjective* and *objective* principles of territoriality that can apply when activities take place partly in the territory of one State and partly in the territory of another. The State where the conduct is initiated exercises jurisdiction on the basis of subjective territoriality, and the State where the conduct is completed exercises jurisdiction on the basis of objective territoriality, provided that the conduct constitutes a criminal offence in the law of each State if performed there in its entirety, and if an element of the *actus reus* of the offence took place there. These extensions of territorial jurisdiction are frequently encountered in common law systems, and are often bound up with notions of constructive presence.

7. Complementing these bases of jurisdiction are various types of *extraterritorial jurisdiction*. The *principle of nationality*, whereby States exercise jurisdiction over the

⁶ See further M. Shaw, *International Law* (4th ed., Cambridge, 1997), pp. 452-478.

conduct of their nationals, wherever it takes place, is particularly favoured by civil law systems, but it is increasingly invoked in common law jurisdictions. States sometimes also exercise criminal jurisdiction on the ground that their nationals are the victims of the crime (*passive personality principle*), or that the crime imperils the vital national interests of the State (*protective principle*), or, occasionally, that the effects of conduct abroad are experienced within the territory of the State (*effects principle*).

8. Furthermore, certain crimes, such as piracy and war crimes, are regarded as so inhuman and prejudicial to the interests of all States, that any State may exercise jurisdiction over them, wherever they take place and whatever the nationality of the alleged offender (*universal jurisdiction*). So-called *quasi-jurisdiction* is discussed at paragraphs 15 and 16 below.

9. These jurisdictional principles are useful in describing the grounds on which States normally claim to exercise jurisdiction in the absence of a right to exercise jurisdiction conferred by treaty. However, it should not be supposed that an exercise of extraterritorial jurisdiction is permissible in international law only if it can be accommodated within one of these established categories. International law does not prohibit States from extending the application of their laws and the jurisdiction of their courts only if this can be justified by reference to a permissive rule of international law. On the contrary, international law leaves a good measure of discretion to States. We shall see that the conventions which seek to establish a uniform approach to terrorist offences require States to establish their jurisdiction in some circumstances where there are present none of the traditional jurisdictional linking factors. Nevertheless, the exercise of jurisdiction in the circumstances contemplated by the conventions has been accepted by States as entirely in conformity with international law.

10. A further important, technical note of caution must be sounded. The jurisdiction of a State's courts and the ambit of its laws are inseparably bound together, for unless the *criminal law* of a State extends to conduct outside its territory, for example, on board a ship registered with the State when on the high seas, conduct cannot be characterised as unlawful, and consequently there is no offence over which the courts of that State can exercise jurisdiction. There is therefore a vital need to ensure that a State's laws (not just its jurisdiction) extend to conduct on board its registered ships and aircraft, and that its courts are competent to exercise jurisdiction over infringements of those laws (see, for instance, clause 3 of the model Bill at page 40 below).⁷

11. Each of the conventions has to deal with these jurisdictional difficulties. For example, the Tokyo Convention requires each Party⁸ to extend its jurisdiction over offences

⁷ In R. v. Martin (1956) 2 Q.B. 272, the accused were charged with being in possession of raw opium on board a British-registered aircraft flying between Bahrain and Singapore. Devlin J. (as he then was) held that under the relevant drugs legislation the offence could be committed only if the acts constituting the offence were committed in England. He considered that Section 62, Civil Aviation Act, 1949 (which provided that any offence whatever that is committed on a British aircraft shall, for the purpose of conferring jurisdiction, *be deemed to have been committed in any place where the offender is for the time being*) did not create offences or extend the ambit of existing criminal laws. Instead the Act merely provided the place where an act might be tried if *it was an offence if committed on board a British aircraft outside England*. Since the ambit of the drugs legislation under which the accused were indicted did not extend to the circumstances in which the particular act was committed, there was no offence over which the English courts could exercise jurisdiction. The vacuum in English law exposed by this judgment was later remedied.

⁸ The conventions speak of 'Contracting State' or, more often, 'State Party'. The legally-correct term is

committed on board aircraft registered in that State. The Hague and later conventions come close to establishing universal jurisdiction over various terrorist acts. The conventions also make detailed provision for extradition thereby considerably reducing the risk that offenders will escape arrest and punishment. Apart from Tokyo and Explosives, the conventions, although by no means identical, contain these and certain other common provisions, the most important of which will now be described.

Definition of the offences

12. Although each convention requires the parties to legislate for the offences defined in it, many will already be crimes under existing law, such as murder, causing explosions, kidnapping. (For extra clarity, the offences will sometimes be referred to in this publication as ‘Convention offences’.)

National liberation movements

13. None of the conventions make any exception for acts done in furtherance of the aims of national liberation movements (NLMs). In the case of the Hostages Convention there were proposals to limit the protection of the Convention to ‘innocent’ hostages, and to justify the taking of hostages in certain situations, such as by national liberation movements (NLMs). These were not accepted. However, unique among the conventions, the Hostages Convention has, in Article 12, a provision concerning the relationship with the Geneva Conventions 1949 (and the 1977 Additional Protocols thereto).⁹ This excludes from the scope of the Convention hostage-taking when it is a ‘grave breach’ of the Geneva Conventions, and for which the Parties to those Conventions have an obligation to prosecute or extradite. Unfortunately, the tortuous language of Article 12 - in particular the last few lines - has led some over-optimistic writers into the mistaken belief that hostage-taking by NLMs is legitimised by the Convention. That is wrong. The effect of the article is simply that in certain circumstances where an alleged offender can be prosecuted for a war crime pursuant the Geneva Conventions, he cannot be prosecuted for an offence under the Hostages Convention.¹⁰

Preparatory acts, ancillary offences and conspiracy

14. Preparatory acts are not included in the conventions, unless they amount to an attempt to commit, or complicity in, an offence. The conventions therefore reflect the common law principle, which is similar to those in other legal systems, only the precise application of the principle varies.¹¹ The offences under the conventions include attempts and being an accessory or accomplice, though the formulas vary slightly. It is unclear whether the concept of complicity is wide enough to embrace conspiracy. Thus, beginning with the Terrorist Bombings Convention 1997, the concept of conspiracy was added, or at least made explicit;

simply ‘Party’, which is defined in Article 2(1)(g) of the Vienna Convention on the Law of Treaties 1969 as ‘a State which has consented to be bound by the treaty [i.e. has ratified or acceded], *and for which the treaty has entered into force*’. Properly used, the term ‘Contracting State’ refers to a State which has consented to be bound, but for which the treaty may not yet be in force. ‘State Party’ adds nothing.

⁹ 75 UNTS 3 (Reg. Nos. 970-3); UKTS (1958) 39 and 1125 UNTS 3 (Reg. No. 17512); UKTS (1999) 29 and 30.

¹⁰ See J. Lambert, *Terrorism and Hostages in International Law* (Grotius, Cambridge, 1990), pp. 263-298. He does not fall into the trap.

¹¹ But see, for example, the substantive offence of possession of an article in circumstances which give rise to a reasonable suspicion that its possession is for a purpose connected with, inter alia, the preparation of an act of terrorism: (UK)Terrorism Act 2000, section 57.

and the Terrorist Financing Convention 1999 made a clearer distinction between the civil law concept of *association malfaiteur* and the roughly similar common law concept of conspiracy.¹²

All but the Tokyo and Explosives Conventions have at their heart the crucial principle that an alleged offender must not find a safe haven in the territory of any Party, whatever his nationality or wherever the offence was committed. This is done by three means: establishment of quasi-universal jurisdiction, the *aut dedere aut judicare* rule (so-called ‘extradite or prosecute’) and more effective extradition provisions.

Quasi-universal jurisdiction

15. A Party must establish its jurisdiction over the offences defined in each convention if they are committed in its territory or, generally, by one of its nationals abroad or on board a vessel or aircraft registered with it. Other bases for jurisdiction are also to be found. To ‘establish jurisdiction’ means that, under its domestic law, a Party must be able to deal with an alleged offender. It has sometimes been asserted that the obligation to establish jurisdiction means that a party must also *exercise* that jurisdiction. That is wrong. All that is required is that the domestic law must *enable* the alleged offender to be detained and, if appropriate, extradited or put on trial.

16. Beginning with the Hague Convention, even when neither the crime nor the alleged offender has any connection with a Party, it must nevertheless ensure that it has jurisdiction over the offence if the alleged offender is ‘present [or found] in its territory’. It is then able to detain him and, if appropriate, prosecute him, if it does not extradite him to another Party in accordance with the *aut dedere aut judicare* rule (paragraph 22 below). Acts of piracy and war crimes can be tried by any State since they are regarded as the concern of all States and are therefore subject to universal jurisdiction. Jurisdiction is termed ‘quasi-universal’ when it has the same purpose as universal jurisdiction, but is authorised only by treaty. Its purpose is to ensure that there will be no hiding place for alleged offenders in the States that are Parties to the treaty.

Non-Parties

17. The conventions require each Party to establish its jurisdiction over an alleged offender present or found in its territory. There is no requirement that he be one of its nationals or have any connection with that or another Party. This is essential for the effectiveness of the conventions. But it has sometimes been questioned whether these jurisdictional provisions of the conventions can apply to the nationals of a State that is not a Party to the relevant convention (usually termed ‘a third State’) when the act is not done in the territory of a Party, or on a ship or aircraft registered with that Party and the person is not linked in some way with the Party. Under the Law of Treaties no treaty obligation can be imposed on a third State without its written consent.¹³ But the conventions do not purport to place any obligation on third States; the obligation is on the Party in whose territory the person is found. The conventions were adopted within universal international organisations either by consensus or by thumping big majorities. This represents a sufficient degree of the

¹² See pages 244 (para. 9) and 270 (para. 23) below. Article 2(5)(c) of the Financing Convention was taken from Article 25(3)(a) of the Statute of the International Criminal Court 1998 (UNTS Reg. No. 38544); ILM (1998), p. 1002.

¹³ See Aust, pp. 207-211.

acceptance by States that such jurisdiction is not contrary to international law. The principle has now become so well established in ten of the conventions, and in universal treaties on other subjects,¹⁴ that its legality is now beyond reasonable doubt. The application of the principle was begun in 1970 with the Hague Convention. That it applies to aircraft registered in third States is established not only by the plain meaning of the Convention, but also by its *travaux préparatoires* (negotiating history). It was the clear intention of the Hague Conference that the Convention should apply to the hijacking of aircraft wherever they are registered. Similarly the Convention is intended to apply to the conduct of persons on board aircraft in flight regardless of whether they are nationals of a Party.

18. Starting in 1988 with Article 6(2) of the Rome Convention, the conventions usually give a Party a *discretion* to establish its jurisdiction in certain other circumstances, such as if the offence is committed abroad but against one of its own nationals. It is necessary for this power be given by treaty since many states do not generally accept this ‘passive personality principle’ or ‘protective principle’ (see para. 7 above).

19. The conventions do not say which State has *priority of jurisdiction*. In practice the Party which has custody of the alleged offender has the first option to prosecute, and if it does not extradite it has an obligation to start proceedings for a prosecution (see paragraph 21 below).

Exercise of jurisdiction

20. With the usual exception of Tokyo and Explosives, each convention requires a Party in whose territory an alleged offender is found to make a preliminary inquiry into the facts of the case. This is done in accordance with domestic law. However, as we will see next, while the Party must be satisfied that the circumstances warrant custodial measures to ensure the presence of the suspect, the conventions do not provide a similar discretion to refrain from instituting the preliminary inquiry. While a Party may trust the alleged offender not to disappear, any potential sympathy with the motivation underlying the act will not permit it either to evade its duty to conduct a proper inquiry, or at the very least an examination by the police of the evidence.

21. When an alleged offender is present in the territory of a Party, if it is ‘satisfied that the circumstances so warrant’ it must, in accordance with its law, take him into custody, or take such other measures to enable any criminal or extradition proceedings to be instituted.¹⁵ This limited discretion is common to the conventions, but must be exercised reasonably and in good faith. The ‘circumstances’ which can be taken into account in deciding whether to take action are primarily evidentiary; a Party is not required to arrest any person alleged to be an offender, there must be some evidentiary grounds. But the discretion is not limited to such matters. Although a Party cannot decline to take action for purely political reasons, in an extreme case a Party might, on humanitarian grounds, grant free passage through its territory to alleged offenders in order, say, to save the lives of hostages or secure their release. In such

¹⁴ United Nations Convention against Illicit Traffic in Narcotic Drugs (UNTS Reg No. 27627; ILM (1989), p. 493; UKTS (1992) 26 (Article 6(9)); Convention on the Safety of United Nations and Associated Personnel 1994 (UNTS Reg. No. 35457), Article 10(4).

¹⁵ The wording varies slightly between the conventions, but not in substance. The reason for the differences here, and in the other conventions, is mainly due to the forum in which each convention was negotiated (UN, IAEA, ICAO, IMO).

a case, the obligations of the other Parties would remain the same. The requirement applies to every Party, whether or not the crime was committed on its territory, and whether or not it has received a request for provisional arrest pending a formal request for extradition.

Aut dedere aut judicare¹⁶ ('extradite or prosecute')

22. Building on a somewhat similar principle in the Geneva Conventions of 1949, the conventions require that when an alleged offender is found in the territory of a Party, it must either to extradite him or 'without exception whatsoever and whether or not the offence was committed in its territory submit the case to its competent authorities for the purpose of prosecution'.¹⁷ There can be many reasons why a State refuses to extradite: the person may be one of its own nationals and its law prohibits their extradition; it may not have confidence in the fairness of the other legal system; it may not trust the other state to prosecute (the very special factors in the Lockerbie case are dealt with at page 80 below). The phrase 'extradite or prosecute' is merely shorthand, since the actual wording makes it clear that there is no obligation to prosecute whatever the circumstances, for example if there is not sufficient evidence.

23. Although comprehensive statistics on extraditions and prosecutions pursuant to the conventions are not easy to find, extradition of alleged offenders appears to happen rarely, even if the person is a foreigner. If the crime was committed in the territory of another Party, there is an advantage in sending the alleged offender there since most of the evidence and the witnesses should be there, and the chances of conviction are therefore greater.

Extradition

24. Effective arrangements for the extradition or return of alleged offenders are of the greatest importance if such activities are to be deterred or punished. The great increase in terrorist acts against aircraft in the late 1960s immediately revealed the inadequacy of existing extradition arrangements to meet this threat. There is no duty imposed by customary international law to surrender individuals accused or convicted of offences in other States. Their surrender is therefore dependent upon the existence of an extradition treaty or some similar arrangement, such as the scheme for the return of fugitive offenders which operates among Commonwealth countries. However extradition arrangements are far from complete; sometimes no arrangements exist between the State where the alleged offender has taken refuge and the one seeking his extradition, thereby rendering his return virtually impossible. The Hague Convention acknowledged this difficulty and attempted to remedy it by extending existing arrangements for extradition and by providing a basis for new arrangements. These provisions are repeated in the later conventions, some of which have additional provisions (which will be noted in the relevant chapter), but which do not affect the four basic elements.¹⁸

25. *First*, a convention offence is deemed to be included as an extraditable offence in any extradition treaty existing between Parties. (As a general rule, States include in extradition treaties lists of offences in respect of which extradition may be requested.) The effect of the

¹⁶ Also sometimes described *aut dedere aut punire*.

¹⁷ During the negotiation of the Diplomats Convention the Netherlands proposed that a Party should not be obliged to submit a case for prosecution unless it had first received and rejected a request for extradition, but this was not accepted. However, the Dutch Government made a reservation to this effect on accession. It did the same with later conventions. No other Parties have objected.

¹⁸ See Lambert, pp. 243-4, inc. note 65.

provision is to amend all existing extradition treaties (and possibly some regional treaties) between the Parties so as to include the convention offence as an extraditable offence. However, if such an amendment is to be effective in the law of a Party it may well require legislation to add the convention offence to the offences which are extraditable under the law of that Party.

26. Parties also undertake to include the convention offence as an extraditable offence in every future extradition treaty to be concluded between them. The effect of the failure of Parties to include such a provision in a subsequent extradition treaty is uncertain. It would clearly be a breach of the relevant convention, but it is doubtful whether such a provision would be deemed to be included in the later extradition treaty in the absence of clear words to that effect. Furthermore, the provision applies only in relation to treaties concluded subsequently between Parties; it has no application to extradition treaties subsequently concluded between a Party to the convention and a non-Party.

27. *Secondly*, the convention itself supplies a new legal basis for extradition in providing for the case where a Party, which makes extradition conditional on the existence of an extradition treaty, receives a request for extradition from another Party with which it has no extradition treaty. It may then, at its option, consider the convention as the legal basis for extradition in respect of the convention offence. Whereas under the Tokyo Convention extradition is possible between Parties only if there exists an extradition treaty or comparable arrangement between them, the other conventions provide a substitute for such a treaty or arrangement. For the purposes of extradition, each convention is a multilateral extradition treaty which can be invoked when there is available no other legal basis for extradition. However, the convention may discharge this function only at the option of the *requested* Party. If the convention is invoked in this way, the extradition of the alleged offender must, nevertheless, comply with the other conditions for extradition stipulated by the law of the requested Party. The provision imposes no obligation on a requested Party to extradite the alleged offender. However, if it fails to do so it must then submit the case to its competent authorities for the purpose of prosecution in accordance with the *aut dedere aut judicare* rule.

28. *Thirdly*, the convention provides that where Parties do not make extradition conditional on the existence of a treaty, those Parties shall recognize the convention offence as an extraditable offence as between themselves. Once again the conditions for extradition laid down by the domestic law of the requested Party must be complied with. Furthermore, the arrangement may be invoked only at the option of the *requested* Party, but, in the event of a failure to extradite, that Party is obliged by the *aut dedere aut judicare* rule to submit the case to its competent authorities for the purpose of prosecution.

29. *Fourthly*, extradition treaties frequently provide that the offence in respect of which the return of the alleged offender is requested must have been committed in the territory of the Party seeking his extradition. Such provisions are likely to give rise to difficulty in the case of requests for the extradition of alleged terrorists. This is overcome by the provision that the offence shall be treated, for the purpose of extradition between Parties, as if it had been committed not only in the place in which it actually occurred, but also in the territory of the Parties required to establish their jurisdiction over the offence. By the use of this legal fiction, problems arising from the actual situs of the offence are solved in the case of a request for extradition made by any of the Parties.

30. We have seen that the conventions make no provision for priority in the exercise of jurisdiction by Parties.¹⁹ Similarly, the conventions do not attempt to establish a scheme of priority in the matter of extradition.

The political offence exception

31. The political exception must be clearly distinguished from the clause in most of the conventions that mutual legal assistance or extradition may be refused if it has been requested for the purpose of prosecuting or persecuting the person for his political opinion (see, for example, Article 9(1) of the Hostages Convention). In contrast, the political exception is the provision in certain extradition treaties, or domestic laws, which makes ‘political offences’ - crimes committed with a political motive - not extraditable. Given that most terrorist crimes are committed for some political purpose, and the earlier conventions do not prohibit the political exception, this can prevent extradition for a terrorist offence, though the requested Party would then have to follow the *aut dedere aut judicare* rule. However, the Terrorist Bombing Convention 1997 (Article 11) and the Terrorist Financing Convention 1999 (Article 14) do prohibit the political exception, as do some extradition treaties.

32. The lack of a prohibitive in the earlier conventions may, at first sight, be seen as a major weakness. This would no doubt be so if it was intended that the conventions should make extradition of alleged offenders mandatory. However, this is not the case. Although the Eastern bloc argued at the Hague Conference in favour of mandatory extradition, it was not adopted. While the Hague and other earlier conventions have been effective in extending existing arrangements for extradition and in establishing new arrangements, they clearly contemplate extradition as only one possible course of action available to a Party in whose territory an alleged hijacker is found. This is demonstrated by the *aut dedere aut judicare* rule, which requires a Party to submit the case to its competent authorities for the purpose of prosecution if the alleged offender is not extradited. It is clear that most terrorist acts are committed for political purposes, and therefore, at least until the end of the Cold War, a convention imposing a mandatory requirement of extradition would have been unlikely to gain general support. The position adopted in the earlier conventions, whereby a Party will have the choice of extraditing an alleged hijacker found in its territory or prosecuting him itself, is a workable compromise acceptable to the large majority of States.

Disputes

33. Any dispute between two or more Parties about the interpretation or application of any of the conventions is subject to a common clause. Although it varies slightly in wording, the substance is the same. A dispute, which cannot be settled through negotiation can, at the request of any one of the parties in dispute, 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 them can refer the dispute to the International Court of Justice by a request in conformity with the Statute of the Court. However, a Party may at the time of signature, ratification or accession declare that it does not consider itself bound by this provision, and this reservation operates on a reciprocal basis. A Party may withdraw the reservation.

¹⁹ Para. 19 above.

Reservations

34. Unlike the Tokyo and Explosives Conventions, the other conventions include no prohibition on reservations, in addition to the reservation that can be made to the disputes article. When a multilateral treaty does not prohibit reservations or allow only specified reservations, reservations can be made provided they are compatible with the object and purpose of the treaty (Article 19(a) of the Vienna Convention on the Law of Treaties).²⁰ Consequently, before accession is effected it will be necessary to consider whether the accession is to be subject to a reservation. If it is intended to accede subject to a reservation, the reservation must be communicated in writing to the depositary of the convention not later than the time of accession. The most convenient course is for the instrument of accession to include the reservation.

Accession or succession

35. The conventions provide for States to become Parties by signature followed by ratification, or by accession. Accession is the normal method available if the deadline for signature has passed. However, a Commonwealth State that was formerly an overseas territory may, if the particular convention was extended to it by the former colonial State, be able now to *succeed* formally to the Convention rather than accede. Such States should already have legislation implementing the Convention, enacted either by the local legislature or by the former colonial State. Succession is effected by depositing an instrument of succession with the depositary of the convention, who is named in each convention, the Secretary-General of the UN, ICAO, IMO or IAEA, as the case may be.²¹ However, the attitude of Commonwealth States after gaining independence, as well as of foreign States in a similar position, will vary according to the practice adopted by each on and after independence.

Implementing legislation

36. Before ratifying or acceding to any of the conventions, a State will usually have enacted legislation. Legislative provisions are attached to each chapter. However, careful consideration will have to be given by each State as to its precise needs for the content of the legislation.

²⁰ The application of this rule is fraught with difficulties, see A. Aust, *Modern Treaty Law and Practice* (Cambridge 2000), Chapter 8, esp. pp. 108 – 112.

²¹ For an explanation of succession generally, and procedure, see Aust, pp. 305-331.

CHAPTER TWO

CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT 1963 (‘Tokyo Convention’)

1. The Convention, negotiated under the auspices of the International Civil Aviation Organisation (ICAO) and adopted at Tokyo on 14 September 1963, entered into force on 4 December 1969. As of September 2002 173 States were Parties, including 48 Commonwealth States. The United Kingdom ratified the Convention on 29 November 1968 in respect also of all its overseas territories. A number of them have since gained independence and some have formally succeeded to the Convention. The text of the Convention is at page 22 below, and a complete list of signatures, ratifications, accessions, territorial extensions and successions as of September 2002 is at page 30 below.

Object and scope of the Convention

2. The Convention establishes a uniform approach to acts on board aircraft which are offences against penal law, or which may or do jeopardise the safety of aircraft and persons or property on board, or good order and discipline on board. The Convention includes provisions relating to the exercise of jurisdiction (*Articles 3 and 4*) and detailed rules as to the powers of the aircraft commander (*Articles 5 to 10*). *Article 11* deals (inadequately) with hijacking. The Convention makes detailed provision for the powers and duties of Parties when an offence is committed on board an aircraft (*Articles 12 to 15*).

3. The Convention applies only to civil aircraft, not aircraft used in military, customs or police services (*Article 1(4)*). In this the Convention follows the Chicago Convention 1944,²² the constituent treaty of the ICAO, that applies only to civil aircraft. A military aircraft engaged in carrying civilians would probably fall within the Convention, but a civil aircraft employed by civil operators to carry military personnel is probably outside. Whether the Convention applies to activities on board a particular aircraft will ultimately have to be decided in each case.

4. The activities regulated under the Convention fall into two categories:

- (a) Offences against penal law;
- (b) Acts which, whether or not they are offences, may or do jeopardise the safety of the aircraft or persons or property on board or which jeopardise good order and discipline on board. (*Article 1(1)*).

The first category is based on the assumption that the penal laws of one or more States will extend to activities on board the aircraft. Since the Convention does not stipulate that any particular conduct is to be prohibited by the Parties, what constitutes an offence within *Article 1(a)* will vary according to the domestic law. *Article 1(b)* includes activities prejudicial to the safety of the aircraft, persons or property, and to

²² 15 UNTS 295(Reg. No. 102); UKTS (1953) 8.

good order and discipline, on board, whether or not they are offences against penal law.

5. The Convention does not authorise or require any action in respect of offences against penal laws that are of a political nature or based on racial or religious discrimination (*Article 2*). This is expressed to be without prejudice to *Article 4*, which permits a Party, even though it is not the State of registration, to interfere with an aircraft in flight in order to exercise criminal jurisdiction in cases where an offence committed on board affects that State or is necessary to ensure the observance by the State of any obligation under a multilateral treaty. Nor does *Article 2* apply when the safety of the aircraft or persons or property on board requires action.

6. The Convention applies to offences committed or acts done by a person on board an aircraft registered with a Party while the aircraft is in flight (*Article 1(2)*). An aircraft is in flight from the moment when power is applied for the purpose of take-off until the moment when the landing run ends (*Article 1(3)*). Thus an aircraft is in flight from the commencement of its take-off run until the time it turns off the runway after landing. (But note the wider definition of ‘flight’ in *Article 5(1)* which governs the powers of the aircraft commander.) In addition, the Convention applies in two cases where an aircraft is not in flight: (1) when an aircraft is on the surface of the high seas, presumably after an emergency landing, and (2) if an aircraft is on the surface of any area outside the territory of any State, for example Antarctica or at least its so-called unclaimed sector (*Article 1(2)*).

Jurisdiction

7. *Articles 3 and 4* ensure that the State of registration of an aircraft has jurisdiction over offences committed on board, but it also acknowledges the possibility that other States may claim jurisdiction over such conduct, and that there may exist overlapping or concurrent jurisdictions. *Article 3* provides:

1. The State of registration of the aircraft is competent to exercise jurisdiction over offences and acts committed on board.
2. Each [Party] shall take such measures as may be necessary to establish its jurisdiction as the State of registration over offences committed on board aircraft registered in such State.
3.

Acts over which jurisdiction is to be established must therefore also be designated as offences in the criminal law of each Party. In the United Kingdom legislation remedied the defects exposed in *R. v. Martin* (see page 4, note 7 above) by providing that an act or omission taking place on board a British-controlled aircraft while in flight elsewhere than in or over the United Kingdom which, if taking place in the United Kingdom would constitute an offence under the law in force in the United Kingdom, shall constitute that offence.²³

8. Although there is an obligation on a Party to take such measures as may be necessary to establish its jurisdiction over offences on board aircraft registered with it,

²³ See section 1(1) of the Tokyo Convention Act 1967. Now replaced by the Civil Aviation Act, 1982, section 92(1).

there is no corresponding duty to *exercise* the jurisdiction. Later conventions, being specifically designed to deal with terrorism, impose such a duty (cf. *Article 6* of the Hague Convention).

9. The Convention does not exclude any criminal jurisdiction exercised in accordance with domestic law (*Article 3(3)*). And *Article 4* permits a Party, although it is not the State of registration of the aircraft, to interfere with an aircraft in flight in order to exercise criminal jurisdiction certain cases:

- (a) The offence has effect on its territory;
- (b) The offence has been committed by or against one of its nationals or permanent residents;
- (c) The offence is against its security;
- (d) The offence consists of a breach of any of its rules or regulations relating to the flight or manoeuvre of aircraft;
- (e) The exercise of jurisdiction is necessary to ensure its observance of any obligation under a multilateral treaty.

These five exceptions cover the situations where a Party other than the State of registration has a particular interest in exercising jurisdiction which is sufficient to justify interference with an aircraft in flight.

10. It is possible, therefore, that a number of Parties may be in a position to exercise jurisdiction in respect of a single activity on board an aircraft. Although the jurisdiction of the State of registration is, in a sense, treated as the primary jurisdiction - for example, the provisions in relation to extradition favour the exercise of jurisdiction by the State of registration (see *Article 16*) - there is no scheme of priority of jurisdiction. Although there is therefore a possibility of conflicts of jurisdiction and double jeopardy, this is a difficulty - which has long been familiar in the case of offences committed in more than one State, or outside the territory of any State - and the lack here and in the later conventions of any provision for priority of jurisdiction is likely to be of limited importance. What is of far greater consequence is that the Convention ensures that whenever an offence is committed on board an aircraft which is registered with a Party to the Convention there will be at least one State of competent jurisdiction, and the risk of such activities going unpunished is therefore greatly reduced.

11. There is a special provision for when Parties have established joint air transport operating organisations or international operating agencies, such as Scandinavian Airlines System (SAS). If they operate aircraft not registered in only one State those Parties must designate which among them is, for the purposes of the Convention, to be considered as the State of registration (*Article 18*). Notice of the designation must be given to ICAO which will, in turn, communicate it to all the Parties. It is not clear whether *Article 18* applies only if all members of the organisation or agency are Parties. The better view would seem to be that it applies when any Party participates in such an organisation or agency, even if its membership includes non-Parties. Now that only some dozen States are not Parties, the issue may be academic.

12. However, the Convention does not cover all possible difficulties. For example, no specific provision is made for the case where an aircraft is chartered to a

company in a State other than that where the aircraft is registered. It seems that the only Party required to establish its jurisdiction over activities on board the aircraft while it is operated by the charterer is the State of registration. This would be so even if the aircraft is operated by a crew provided by the charterer. This is undesirable because the State with which the aircraft is most closely connected when so operated is the State in which the charterer has his principal place of business.²⁴

Powers of the aircraft commander

13. *Articles 5 to 10* confer special powers on the commander of an aircraft which may be exercised:

- (a) in respect of offences or acts committed, or about to be committed, by a person on board an aircraft in flight in the airspace of a Party other than the State of registration, that is, in foreign airspace (by implication from the terms of *Article 5(1)*);
- (b) in respect of offences or acts committed, or about to be committed, by a person on board an aircraft in flight in the airspace of the State of registration or over the high seas or any other area outside the territory of the State, if:
 - (i) the last point of take-off, or the next place of intended landing, is situated in a State other than that of registration, or
 - (ii) the aircraft subsequently flies in the airspace of a State other than that of registration (*Article 5(1)*).

In other words, there has to be a foreign element. For the purpose of *Article 5(1)* there is a broader definition of ‘in flight’. An aircraft is considered to be in flight from the moment when all its external doors are closed following embarkation until the moment when any external door is opened for disembarkation; and in the case of a forced landing the special powers of the commander continue with respect to offences and acts committed on board until competent authorities of a State take over responsibility for the aircraft and for the persons and property on board (*Article 5(2)*).

14. The special powers of the commander fall into three categories. *First*, when the commander has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft an offence or act contemplated by *Article 1(1)*, he or she may impose upon that person such reasonable measures, including restraint, as are necessary:

- (a) to protect the safety of the aircraft or of persons or property on board,
- (b) to maintain good order and discipline on board, or
- (c) to enable the commander to deliver that person to competent authorities or to disembark the person (*Article 6(1)*).

²⁴ Note that in 1997 (additional) Article 83bis of the Chicago Convention came into force. This provides that in respect of aircraft registered in one State, some of the functions and powers of the State of Registration may, by agreement, be transferred to another State when the aircraft are chartered to an operator who has his principal place of business or, if he has no such place of business, his permanent residence, in that other State (for the full text, see www.icao.int).

The commander may require or authorise the assistance of other crew members and may request (but not require) and authorise the assistance of passengers to restrain any person whom he or she is entitled to restrain (*Article 6(2)*). Furthermore, any crew member or passenger may take reasonable preventive measures without the authorisation of the commander when he or she has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft or of persons or property on board (*Article 6(2)*).

15. The measures of restraint imposed may not be continued beyond any point at which the aircraft lands unless:

- (a) that point is in the territory of a non-Party and its authorities refuse to permit disembarkation of that person, or the measures have been imposed in order to deliver the person to the competent authorities of a Party;
- (b) the aircraft makes a forced landing and the aircraft commander is unable to deliver that person to competent authorities of a Party; or
- (c) the person restrained agrees to onward carriage under restraint (*Article 7(1)*).

The commander is under an obligation, as soon as practicable and if possible before landing in the territory of a State with a person on board under restraint, to notify the authorities of that State of the fact that a person on board is under restraint, and why *Article 7(2)*.

16. *Secondly*, the aircraft commander may disembark in the territory of any State in which the aircraft lands any person who he or she has reasonable cause to believe has committed, or is about to commit, an act which, whether or not it is an offence, may jeopardise, or does jeopardise, the safety of the aircraft or of persons or property on board, or good order and discipline on board. However, the commander may only do so insofar as it is necessary for the purpose of protecting the safety of the aircraft or of persons or property, or to maintain good order and discipline (*Article 8(1)*); and the commander is obliged to report to the authorities of the State in which he or she disembarks a person the fact of, and the reasons for, the disembarkation (*Article 8(2)*). This power of disembarkation is not limited to disembarkation in the territory of a Party.

17. *Thirdly*, the commander may deliver to the competent authorities of any Party in the territory of which the aircraft lands, any person who he or she has reasonable cause to believe has committed on board the aircraft an act which, in the opinion of the commander, is a serious offence according to the penal law of the State of registration (*Article 9(1)*). The power of delivery is narrower than the power of disembarkation in two ways: it is limited to delivery to the competent authorities of a Party, and it is restricted to ‘a serious offence’, though that is not defined in the Convention and seems to be left to the opinion of the commander. The commander is under a duty, as soon as practicable and if possible before landing in the territory of the Party, to notify its authorities that he or she has a person on board that is to be delivered, and why (*Article 9(2)*). The commander is obliged to furnish to the authorities to whom a suspected offender is delivered evidence and information of

which, under the law of the State of registration, he or she is lawfully in possession (*Article 9(3)*)

18. The Convention makes no provision for the payment of costs incurred by the State of landing, or the cost of the onward flight of a person who has been disembarked or delivered.

19. The commander, the members of the crew, the passengers, the owner or operator of the aircraft, and the person on whose behalf the flight was performed, is not be held responsible for actions taken in accordance with the Convention in any proceedings on account of the treatment undergone by the person against whom the actions were taken (*Article 10*). However, since the powers conferred on the commander are exercisable only when there are reasonable grounds for believing that their exercise is necessary, *Article 10* may provide no protection where there were no reasonable grounds for believing (1) in the case of restraint and disembarkation, that an offence or prejudicial act had been committed or was about to be committed, or (2) in the case of delivery, that a serious offence according to the penal law of the State of registration of the aircraft had been committed.

(The powers and duties of Parties in relation to disembarkation and delivery are considered in paragraphs 21 to 26 below.)

Unlawful seizure of aircraft

20. *Article 11* deals with the specific offence of unlawful seizure of an aircraft (hijacking). When a person on board an aircraft has unlawfully committed by force, or threat of force, an act of interference, seizure or other wrongful exercise of control of an aircraft in flight (as defined in *Article 1(3)*), or when such an act is about to be committed, the Parties are under a duty to take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his or her control of the aircraft. The Party in whose territory the aircraft lands must permit its passengers and crew to continue their journey as soon as practicable, and return the aircraft and its cargo to the persons lawfully entitled to possession (*Article 11(2)*). These provisions deal in only general terms with hijacking. However, these rudimentary provisions foreshadow the comprehensive provisions of the Hague Convention. The powers and duties of Parties under the (Tokyo) Convention in relation to persons suspected of hijacking are considered in the following paragraphs.

Powers and duties of Parties in relation to disembarkation and delivery

21. The Convention imposes certain duties, and confers certain powers, on Parties regarding the exercise of jurisdiction, in particular in relation to persons who have been disembarked or delivered in the manner described in the preceding paragraphs. The most important duty is that which requires Parties to pay due regard to the safety and other interests of air navigation when taking any measures for investigation or arrest, or otherwise exercising jurisdiction, in connection with any offence committed on board an aircraft. In such circumstances Parties must also avoid unnecessary delay of the aircraft, passengers, crew or cargo (*Article 17*).

22. The circumstances in which the commander of an aircraft may *disembark* a person (*Article 8(1)*) have been considered in paragraph 16 above. Parties are under a corresponding duty to allow the commander of an aircraft registered with another

Party to disembark such a person (*Article 12*). As we have seen, the commander may exercise the power to disembark a person if it is necessary to protect the safety of the aircraft or of persons or property on board, or to maintain good order and discipline, if he or she has reasonable grounds to believe that the person has committed, or is about to commit, an act which may or does jeopardise the safety of the aircraft or persons or cargo on board, or good order and discipline. However, the Convention contains nothing entitling the Party in whose territory the person is disembarked to determine whether the grounds for disembarkation are reasonable before it receives the person.

23. *Article 13(1)* requires Parties to take delivery of any person who the commander *delivers* in accordance with *Article 9(1)* (see paragraph 17 above). A Party to whom a person has been delivered is under a duty, if satisfied that the circumstances so warrant, to take custodial or other measures to ensure the presence of the person; and is under a similar duty in relation to any person suspected of having hijacked an aircraft or having attempted to do so (*Article 13(2)*). A Party to which a person is delivered, or in whose territory an aircraft lands following a hijacking or attempted hijacking, must make a preliminary inquiry into the facts (*Article 13(4)*). Custodial and other measures must be as provided for in the law of that Party (*Article 13(2)*). (The adoption by the Convention of national standards of treatment of aliens is considered in greater detail in paragraphs 25 and 26 below.)

24. The Party making the preliminary inquiry is under a duty promptly to report its findings to the State of registration of the aircraft, the State of nationality of the person in custody and, if it considers it advisable, any other interested State, and to indicate whether it intends to exercise jurisdiction (*Article 13(5)*).

Treatment of other passengers and the crew

25. The Convention makes provision for the powers and duties of Parties where a person has been disembarked or delivered. These may conveniently be treated together. Where the person cannot continue the journey or does not desire to do so, and the State of landing refuses to admit the person, that State may, if the person in question is not a national or permanent resident of that State, return him or her to the territory of the State of which he or she is a national or permanent resident, or to the territory of the State in which the journey began by air (*Article 14(1)*). A Party is not to be regarded as having admitted a person to its territory for the purpose of its law relating to entry or admission of persons simply because it has permitted disembarkation or delivery or has taken custody or other measures. Similarly the return of a person does not have that effect. Furthermore, it does not affect the law of a Party relating to expulsion of persons from its territory (*Article 14(2)*). (These provisions are probably subject to the obligations of a State with regard to persons claiming refugee status, though that status cannot be claimed where there are good grounds for believing that a person has been involved in terrorism: see the UN Declaration of 17 December 1996 (A/RES/51/210)). A person who wants to continue the journey must as soon as practicable be allowed to proceed to any destination of choice, unless the presence of the person is required by the law of the State of landing for the purpose of extradition or criminal proceedings (*Article 15(1)*). In that case, the State of landing is obliged to accord to such person treatment which is no less favourable for protection and security than that accorded to nationals of that State in like circumstances (*Article 15(2)*).

Treatment of persons disembarked or delivered

26. This adoption of a national standard, subject to the exceptions listed below, may be seen as regrettable because persons disembarked or delivered under the Convention to a Party can hardly be regarded as having voluntarily accepted the protection afforded by its legal system. However, four further matters must be taken into account in applying these provisions of the Convention. First, if there is a rule of customary international law requiring the application of an international minimum standard in the treatment of aliens, a provision requiring Parties to apply only the national standard would have the paradoxical result that a national of a Party disembarked or delivered in a State which is not a party to the Convention would be entitled to the protection of the international minimum standard, whereas the person would not be so protected if disembarked or delivered to another Party. However, it is not clear that the Convention was intended to derogate from international law in this way and it is likely that, despite the provisions in the Convention, Parties are nevertheless obliged to conform with the rules of customary international law which require that aliens should be treated in conformity with a minimum international standard. Rules of customary international law, being *lex generalis*, prevail over treaty provisions which do not unambiguously purport to override the customary rules. Secondly, the Convention clearly cannot affect the international obligations of a Party to treat the nationals of a non-Party in accordance with the international minimum standard. Thirdly, under the Convention the national standard applies only to custody or other measures to ensure a person's presence (*Article 13(2)*) and matters of protection and security (*Article 15(2)*). Consequently the international minimum standard would appear to apply to all other matters. Fourthly, the application of the national standard is subject to certain exceptions:

- (a) Custody and other measures to ensure the presence of the person may only be continued for such time as is reasonably necessary to enable any criminal or extradition proceedings to be instituted (*Article 13(2)*);
- (b) Any person in custody must be helped to communicate immediately with the nearest appropriate representative of the State of which the person is a national (*Article 13(3)*);
- (c) When a Party has taken a person into custody it must immediately notify the State of registration of the aircraft and the State of nationality of the person and, if it considers it advisable, any other interested State of the fact that such person is in custody and of the circumstances which warrant detention (*Article 13(5)*).

Extradition

27. Acts committed on board an aircraft may constitute offences in a number of different jurisdictions. We have already seen that the Convention makes no provision for a priority of jurisdictions (paragraph 10 above). The Convention requires that a Party to which a person is delivered, or in whose territory an aircraft lands, following the commission of a hijacking or attempted hijacking, must immediately make a preliminary inquiry into the facts (*Article 13(4)*) and promptly report its findings to the State of registration of the aircraft and the State of nationality of the detained person and, if it considers it advisable, to any other interested States (*Article 13(5)*). It is also required to indicate whether it intends to exercise jurisdiction (*Article 13(5)*). Because of the possible existence of concurrent jurisdiction and the lack of any scheme of priority, the State of landing may also receive one or more requests for the

person's extradition or return. The Convention expressly provides that nothing in it shall be deemed to create an obligation to grant extradition (*Article 16(2)*), and consequently the rights and duties of the Parties will be governed by such agreements or arrangements as may exist among them for the extradition or return of such persons. However, the Convention does provide that such a person is not to be at liberty to depart from the State of landing if his or her presence is required for the purpose of extradition proceedings (*Article 15(1)*), and that the person may be detained in custody for such time as is reasonable to enable the proceedings to be instituted (*Article 13(2)*).

28. Offences committed on board aircraft registered with a Party are treated, for the purpose of extradition, as if they had been committed, not only in the place where they have occurred, but also in the territory of the State of registration of the aircraft (*Article 16(1)*). This can have no effect in the absence of an extradition treaty or arrangement for the return of fugitive offenders between the requesting and requested States. However, where such a treaty or arrangement exists the provision may have the effect of extending its possible operation. For example, where an extradition treaty makes provision for the extradition of persons charged with offences committed within the territory of the requesting State, the provision would be extended to offences committed on board aircraft registered in the requesting State if both States are Parties to the Convention. While this extension is obviously important, its effect will vary according to the terms of the extradition treaty or arrangement in force between the Parties. Such an extension of extradition arrangements would require also to be reflected in the domestic law of the requested Party.

Disputes

29. *Article 24(1)* provides that any dispute between two or more Parties about the interpretation or application of the Convention which cannot be settled through negotiation can, at the request of any one of them, be submitted to a compulsory settlement process (see page 10, paragraph 33 above). However, a Party may at the time of signature, ratification or accession declare that it does not consider itself bound by this provision, and this reservation operates on a reciprocal basis (*Article 24(2)*). A Party may withdraw the reservation.

Reservations

30. With the single exception of reservations to *Article 24(1)* referred to above, *no* reservations may be made to the Convention. Of the later conventions, only the Explosives Convention has this prohibition.

Accession

31. If a State did not sign the Convention before it entered into force on 4 December 1969, it cannot now ratify it, but it can become a Party by acceding, provided it is a Member of the United Nations or of any of the Specialised Agencies (*Article 22(1)*). The instrument of accession must be deposited with the depositary, ICAO. If a reservation is to be entered to *Article 24*, it must be communicated in writing to the depositary not later than the time of accession, and is therefore best included the instrument of accession.

Succession

32. A number of States may be able to succeed formally to the Convention rather than accede (see page 11 above).

Implementation

33. Legislation will normally be necessary in order to give effect to the Convention in domestic law. Model legislative provisions are at page 38 below. However, careful consideration will have to be given by each State which is considering becoming a Party to the Convention as to its precise needs for the content of the legislation.

**TOKYO CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS
COMMITTED ON BOARD AIRCRAFT**

THE STATES Parties to this Convention

HAVE AGREED as follows:

Chapter I - Scope of the Convention

ARTICLE 1

1. This Convention shall apply in respect of:
 - (a) offences against penal law;
 - (b) acts which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board.
2. Except as provided in Chapter III, this Convention shall apply in respect of offences committed or acts done by a person on board any aircraft registered in a Contracting State, while that aircraft is in flight or on the surface of the high seas or of any other area outside the territory of any State.
3. For the purposes of this Convention, an aircraft is considered to be in flight from the moment when power is applied for the purpose of take-off until the moment when the landing run ends.
4. This Convention shall not apply to aircraft used in military, customs or police services.

ARTICLE 2

Without prejudice to the provisions of Article 4 and except when the safety of the aircraft or of persons or property on board so requires, no provision of this Convention shall be interpreted as authorizing or requiring any action in respect of offences against penal laws of a political nature or those based on racial or religious discrimination.

Chapter II - Jurisdiction

ARTICLE 3

1. The State of registration of the aircraft is competent to exercise jurisdiction over offences and act committed on board.

2. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction as the State of registration over offences committed on board aircraft registered in such State.

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

ARTICLE 4

A Contracting State which is not the State of registration may not interfere with an aircraft in flight in order to exercise its criminal jurisdiction over an offence committed on board except in the following cases:

- (a) the offence has effect on the territory of such State;
- (b) the offence has been committed by or against a national or permanent resident of such State;
- (c) the offence is against the security of such State;
- (d) the offence consists of a breach of any rules or regulations relating to the flight or manoeuvre of aircraft in force in such State;
- (e) the exercise of jurisdiction is necessary to ensure the observance of any obligation of such State under a multilateral international agreement.

Chapter III - Powers of the Aircraft Commander

ARTICLE 5

1. The provisions of this Chapter shall not apply to offences and acts committed or about to be committed by a person on board an aircraft in flight in the airspace of the State of registration or over the high seas or any other area outside the territory of any State unless the last point of take-off or the next point of intended landing is situated in a State other than that of registration or the aircraft subsequently flies in the airspace of a State other than that of registration with such person still on board.

2. Notwithstanding the provisions of Article 1, paragraph 3, an aircraft shall for the purposes of this Chapter, be 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 provisions of this Chapter shall continue to apply with respect to offences and acts committed on board until competent authorities of a State take over the responsibility for the aircraft and for the persons and property on board.

ARTICLE 6

1. The aircraft commander may, when he has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an offence or act

contemplated in Article 1, paragraph 1, impose upon such person reasonable measures including restraint which are necessary:

- (a) to protect the safety of the aircraft, or of persons or property therein; or
 - (b) to maintain good order and discipline on board; or
 - (c) to enable him to deliver such person to competent authorities or to disembark him in accordance with the provisions of this Chapter.
2. The aircraft commander may require or authorize the assistance of other crew members and may request or authorize, but not require, the assistance of passengers to restrain any person whom he is entitled to restrain. Any crew member or passenger may also take reasonable preventive measures without such authorization when he has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft, or of persons or property therein.

ARTICLE 7

1. Measures of restraint imposed upon a person in accordance with Article 6 shall not be continued beyond any point at which the aircraft lands unless:

- (a) such point is in the territory of a non-Contracting State and its authorities refuse to permit disembarkation of that person or those measures have been imposed in accordance with Article 6, paragraph 1(c) in order to enable his delivery to competent authorities;
- (b) the aircraft makes a forced landing and the aircraft commander is unable to deliver that person to competent authorities; or
- (c) that person agrees to onward carriage under restraint.

2. The aircraft commander shall as soon as practicable, and if possible before landing in the territory of a State with a person on board who has been placed under restraint in accordance with the provisions of Article 6, notify the authorities of such State of the fact that a person on board is under restraint and of the reasons for such restraint.

ARTICLE 8

1. The aircraft commander may, in so far as it is necessary for the purpose of subparagraph (a) or (b) of paragraph 1 of Article 6, disembark in the territory of any State in which the aircraft lands any person who he has reasonable grounds to believe has committed, or is about to commit, on board the aircraft an act contemplated in Article 1, paragraph 1(b).

2. The aircraft commander shall report to the authorities of the State in which he disembarks any person pursuant to this Article, the fact of, and the reasons for, such disembarkation.

ARTICLE 9

1. The aircraft commander may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person who he has reasonable grounds to believe has committed on board the aircraft an act which in his opinion, is a serious offence according to the penal law of the State of registration of the aircraft.

2. The aircraft commander shall as soon as practicable and if possible before landing in the territory of a Contracting State with a person on board whom the aircraft commander intends to deliver in accordance with the preceding paragraph, notify the authorities of such State of his intention to deliver such person and the reasons thereof.

3. The aircraft commander shall furnish the authorities to whom any suspected offender is delivered in accordance with the provisions of this Article with evidence and information which, under the law of the State of registration of the aircraft, are lawfully in his possession.

ARTICLE 10

For actions taken in accordance with this Convention, neither the aircraft commander, any other member of the crew, any passenger, the owner or operator of the aircraft, nor the person on whose behalf the flight was performed shall be held responsible in any proceeding on account of the treatment undergone by the person against whom the actions were taken.

Chapter IV - Unlawful Seizure of Aircraft

ARTICLE 11

1. When a person on board has unlawfully committed by force or threat thereof an act of interference, seizure, or other wrongful exercise of control of an aircraft in flight or when such an act is about to be committed, 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 in the preceding paragraph, the Contracting State in which the aircraft lands shall permit its passengers and crew to continue their journey as soon as practicable, and shall return the aircraft and its cargo to the persons lawfully entitled to possession.

Chapter V - Powers and Duties of States

ARTICLE 12

Any Contracting State shall allow the commander of an aircraft registered in another Contracting State to disembark any person pursuant to Article 8, paragraph 1.

ARTICLE 13

1. Any Contracting State shall take delivery of any person whom the aircraft commander delivers pursuant to Article 9, paragraph 1.

2. Upon being satisfied that the circumstances so warrant, any Contracting State shall take custody or other measures to ensure the presence of any person suspected of an act contemplated in Article 11, paragraph 1, and of any person of whom it has taken delivery. 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 reasonably necessary to enable any criminal or extradition proceedings to be instituted.

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

4. Any Contracting State, to which a person is delivered pursuant to Article 9, paragraph 1, or in whose territory an aircraft lands following the commission of an act contemplated in Article 11, paragraph 1, shall immediately make a preliminary enquiry into the facts.

5. When a State, pursuant to this Article, has taken a person into custody, it shall immediately notify the State of registration of the aircraft and the State of nationality of the detained person and, if it considers it advisable, any other interested State 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 4 of this Article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

ARTICLE 14

1. When any person has been disembarked in accordance with Article 8, paragraph 1, or delivered in accordance with Article 9, paragraph 1, or has disembarked after committing an act contemplated in Article 11, paragraph 1, and when such person cannot or does not desire to continue his journey and the State of landing refuses to admit him, that State may, if the person in question is not a national or permanent resident of that State, return him to the territory of the State of which he is a national or permanent resident or to the territory of the State in which he began his journey by air.

2. Neither disembarkation nor delivery, nor the taking of custody or other measures contemplated in Article 13, paragraph 2, nor return of the person concerned, shall be considered as admission to the territory of the Contracting State concerned for the purpose of its law relating to entry or admission of persons and nothing in this Convention shall affect the law of a Contracting State relating to the expulsion of persons from its territory.

ARTICLE 15

1. Without prejudice to Article 14, any person who has been disembarked in accordance with Article 8, paragraph 1, or delivered in accordance with Article 9, paragraph 1, or has disembarked after committing an act contemplated in Article 11, paragraph 1, and who desires to continue his journey shall be at liberty as soon as practicable to proceed to any destination of his choice unless his presence is required by the law of the State of landing for the purpose of extradition or criminal proceedings.

2. Without prejudice to its law as to entry and admission to, and extradition and expulsion from its territory, a Contracting State in whose territory a person has been disembarked in accordance with Article 8, paragraph 1, or delivered in accordance with Article 9, paragraph 1, or has disembarked and is suspected of having committed an act contemplated in Article 11, paragraph 1, shall accord to such person treatment which is no less favourable for his protection and security than that accorded to nationals of such Contracting State in like circumstances.

Chapter VI - Other Provisions

ARTICLE 16

1. Offences committed on aircraft registered in a Contracting State shall be treated, for the purpose of extradition, as if they had been committed not only in the place in which they have occurred but also in the territory of the State of registration of the aircraft.

2. Without prejudice to the provisions of the preceding paragraph, nothing in this Convention shall be deemed to create an obligation to grant extradition.

ARTICLE 17

In taking any measures for investigation or arrest or otherwise exercising jurisdiction in connection with any offence committed on board an aircraft the Contracting States shall pay due regard to the safety and other interests of air navigation and shall so act as to avoid unnecessary delay of the aircraft, passengers, crew or cargo.

ARTICLE 18

If Contracting States establish joint air transport operating organizations or international operating agencies, which operate aircraft not registered in any one State those States shall, according to the circumstances of the case, designate the State among them which, for the purposes of this Convention, shall be considered as the State of registration and shall give notice thereof to the International Civil Aviation Organization which shall communicate the notice to all States Parties to this Convention.

Chapter VII - Final Clauses

ARTICLE 19

Until the date on which this Convention comes into force in accordance with the provisions of Article 21, it shall remain open for signature on behalf of any State which at that date is a Member of the United Nations or of any of the Specialized Agencies.

ARTICLE 20

1. This Convention shall be subject to ratification by the signatory States in accordance with their constitutional procedures.
2. The instruments of ratification shall be deposited with the International Civil Aviation Organization.

ARTICLE 21

1. As soon as twelve of the signatory States have deposited their instruments of ratification of this Convention, it shall come into force between them on the ninetieth day after the date of the deposit of the twelfth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.
2. As soon as this Convention comes into force, it shall be registered with the Secretary-General of the United Nations by the International Civil Aviation Organization.

ARTICLE 22

1. This Convention shall, after it has come into force, be open for accession by any State Member of the United Nations or of any of the Specialized Agencies.
2. The accession of a State shall be effected by the deposit of an instrument of accession with the International Civil Aviation Organization and shall take effect on the ninetieth day after the date of such deposit.

ARTICLE 23

1. Any Contracting State may denounce this Convention by notification addressed to the International Civil Aviation Organization.
2. Denunciation shall take effect six months after the date of receipt by the International Civil Aviation Organization of the notification of denunciation.

ARTICLE 24

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, anyone 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 International Civil Aviation Organization.

ARTICLE 25

Except as provided in Article 24 no reservation may be made to this Convention.

ARTICLE 26

The International Civil Aviation Organization shall give notice to all States Members of the United Nations or of any of the Specialized Agencies:

- (a) of any signature of this Convention and the date thereof;
- (b) of the deposit of any instrument of ratification or accession and the date thereof;
- (c) of the date on which this Convention comes into force in accordance with Article 21, paragraph 1;
- (d) of the receipt of any notification of denunciation and the date thereof; and
- (e) of the receipt of any declaration or notification made under Article 24 and the date thereof.

**CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS
COMMITTED ON BOARD AIRCRAFT
Signed At Tokyo On 14 September 1963**

Entry into force: Convention entered into force on 4 December 1969.

Status : 173 Parties.

State	Date of signature	Date of deposit of Instrument of Ratification, Accession or Succession	Effective date
Afghanistan		15 April 1977	14 July 1977
Albania		1 December 1997	1 March 1998
Algeria		12 October 1995	10 January 1996
Angola		24 February 1998	25 May 1998
Antigua and Barbuda		19 July 1985	17 October 1985
Argentina		23 July 1971	21 October 1971
Australia		22 June 1970	20 September 1970
Austria		7 February 1974	8 May 1974
Bahamas		12 June 1975	10 July 1973
Bahrain		9 February 1984	9 May 1984
Bangladesh		25 July 1978	23 October 1978
Barbados	25 June 1969	4 April 1972	3 July 1972
Belarus		3 February 1988	3 May 1988
Belgium	20 December 1968	6 August 1970	4 November 1970
Belize		19 May 1998	17 August 1998
Bhutan		25 January 1989	25 April 1989
Bolivia		5 July 1979	3 October 1979
Bosnia and Herzegovina		7 March 1995	6 March 1992
Botswana		16 January 1979	16 April 1979
Brazil	28 February 1969	14 January 1970	14 April 1970
Brunei Darussalam		23 May 1986	21 August 1986
Bulgaria		28 September 1989	27 December

			1989
Burkina Faso	14 September 1963	6 June 1969	4 December 1969
Burundi		14 July 1971	12 October 1971
Cambodia		22 October 1996	20 January 1997
Cameroon		24 March 1988	22 June 1988
Canada	4 November 1964	7 November 1969	5 February 1970
Cape Verde		4 October 1989	2 January 1990
Central African Republic		11 June 1991	9 September 1991
Chad		30 June 1970	28 September 1970
Chile		24 January 1974	24 April 1974
China		14 November 1978	12 February 1979
Colombia	8 November 1968	6 July 1973	4 October 1973
Comoros		23 May 1991	21 August 1991
Congo	14 September 1963	13 November 1978	11 February 1979
Costa Rica		24 October 1972	22 January 1973
Côte d'Ivoire		3 June 1970	1 September 1970
Croatia		5 October 1993	8 October 1991
Cuba		12 February 2001	13 May 2001
Cyprus		31 May 1972	29 August 1972
Czech Republic		25 March 1993	1 January 1993
Democratic People's Republic of Korea		9 May 1983	7 August 1983
Democratic Republic of the Congo		20 July 1977	18 October 1977
Denmark	21 November 1966	17 January 1967	4 December 1969
Djibouti		10 June 1992	8 September 1992
Dominican Republic		3 December 1970	3 March 1971

Ecuador	8 July 1969	3 December 1969	3 March 1970
Egypt		12 February 1975	13 May 1975
El Salvador		13 February 1980	13 May 1980
Equatorial Guinea		27 February 1991	28 May 1991
Estonia		31 December 1993	31 March 1994
Ethiopia		27 March 1979	25 June 1979
Fiji		31 January 1972	10 October 1970
Finland	24 October 1969	2 April 1971	1 July 1971
France	11 July 1969	11 September 1970	10 December 1970
Gabon		14 January 1970	14 April 1970
Gambia		4 January 1979	4 April 1979
Georgia		16 June 1994	14 September 1994
Germany	14 September 1963	16 December 1969	16 March 1970
Ghana		2 January 1974	2 April 1974
Greece	21 October 1969	31 May 1971	29 August 1971
Grenada		28 August 1978	26 November 1978
Guatemala	14 September 1963	17 November 1970	15 February 1971
Guinea		18 January 1994	18 April 1994
Guyana		20 December 1972	19 March 1973
Haiti		26 April 1984	25 July 1984
Holy See	14 September 1963		
Honduras		8 April 1987	7 July 1987
Hungary		3 December 1970	3 March 1971
Iceland		16 March 1970	14 June 1970
India		22 July 1975	20 October 1975
Indonesia	14 September 1963	7 September 1976	6 December 1976
Iran, Islamic Republic of		28 June 1976	29 September 1976
Iraq		15 May 1974	13 August 1974

Ireland	20 October 1964	14 November 1975	12 February 1976
Israel	1 November 1968	19 September 1969	18 December 1969
Italy	14 September 1963	18 October 1968	4 December 1969
Jamaica		16 September 1983	15 December 1983
Japan	14 September 1963	26 May 1970	24 August 1970
Jordan		3 May 1973	1 August 1973
Kazakhstan		18 May 1995	16 August 1995
Kenya		22 June 1970	20 September 1970
Kuwait		27 November 1979	25 February 1980
Kyrgyzstan		28 February 2000	28 May 2000
Lao People's Democratic Republic		23 October 1972	21 January 1973
Latvia		10 June 1997	8 September 1997
Lebanon		11 June 1974	9 September 1974
Lesotho		28 April 1972	27 July 1972
Liberia	14 September 1963		
Libyan Arab Jamahiriya		21 June 1972	19 September 1972
Lithuania		21 November 1996	19 February 1997
Liechtenstein		26 February 2001	27 May 2001
Luxembourg		21 September 1972	20 December 1972
Madagascar	2 December 1969	2 December 1969	2 March 1970
Malawi		28 December 1972	28 March 1973
Malaysia		5 March 1985	3 June 1985
Maldives		28 September 1987	27 December 1987
Mali		31 May 1971	29 August 1971
Malta		28 June 1991	26 September 1991

Marshall Islands		15 May 1989	13 August 1989
Mauritania		30 June 1977	28 September 1977
Mauritius		5 April 1983	4 July 1983
Mexico	24 December 1968	18 March 1969	4 December 1969
Monaco		2 June 1983	31 August 1983
Mongolia		24 July 1990	22 October 1990
Morocco		21 October 1975	19 January 1976
Myanmar		23 May 1996	21 August 1996
Nauru		17 May 1984	15 August 1984
Nepal		15 January 1979	15 April 1979
Netherlands	9 June 1967	14 November 1969	12 February 1970
New Zealand		12 February 1974	13 May 1974
Nicaragua		24 August 1973	22 November 1973
Niger	14 April 1969	27 June 1969	4 December 1969
Nigeria	29 June 1965	7 April 1970	6 July 1970
Norway	19 April 1966	17 January 1967	4 December 1969
Oman		9 February 1977	10 May 1977
Pakistan	6 August 1965	11 September 1973	10 December 1973
Palau		12 October 1995	10 January 1996
Panama	14 September 1963	16 November 1970	14 February 1971
Papua New Guinea		15 December 1975	16 September 1975
Paraguay		9 August 1971	7 November 1971
Peru		12 May 1978	10 August 1978
Philippines	14 September 1963	26 November 1965	4 December 1969
Poland		19 March 1971	17 June 1971

Portugal	11 March 1964	25 November 1964	4 December 1969
Qatar		6 August 1981	5 December 1981
Republic of Korea	8 December 1965	19 February 1971	20 May 1971
Republic of Moldova		20 June 1997	18 September 1997
Romania		15 February 1974	16 May 1974
Russian Federation		3 February 1988	3 May 1988
Rwanda		17 May 1971	15 August 1971
Saint Lucia		31 October 1983	29 January 1984
Saint Vincent and the Grenadines		18 November 1991	16 February 1992
Samoa		9 July 1998	7 October 1998
Saudi Arabia	6 April 1967	21 November 1969	19 February 1970
Senegal	20 February 1964	9 March 1972	7 June 1972
Seychelles		4 January 1979	4 April 1979
Sierra Leone		9 November 1970	7 February 1971
Singapore		1 March 1971	30 May 1971
Slovakia		20 March 1995	1 January 1993
Slovenia		18 December 1992	25 June 1991
Solomon Islands		23 March 1982	7 July 1978
South Africa		26 May 1972	24 August 1972
Spain	27 July 1964	1 October 1969	30 December 1969
Sri Lanka		30 May 1978	28 August 1978
Sudan		25 May 2000	23 August 2000
Suriname		10 September 1979	25 November 1975
Swaziland		15 November 1999	13 February 2000
Sweden	14 September 1963	17 January 1967	4 December 1969

Switzerland	31 October 1969	21 December 1970	21 March 1971
Syrian Arab Republic		31 July 1980	29 October 1980
Tajikistan		20 March 1996	18 June 1996
Thailand		6 March 1972	4 June 1972
The former Yugoslav Republic of Macedonia		30 August 1994	17 September 1991
Togo		26 July 1971	24 October 1971
Tonga		13 February 2002	14 May 2002
Trinidad and Tobago		9 February 1972	9 May 1972
Tunisia		25 February 1975	26 May 1975
Turkey		17 December 1975	16 March 1976
Turkmenistan		30 June 1999	28 September 1999
Uganda		25 June 1982	23 September 1982
Ukraine		29 February 1988	29 May 1988
United Arab Emirates		16 April 1981	15 July 1981
United Kingdom	14 September 1963	29 November 1968	4 December 1969
United Republic of Tanzania		12 August 1983	10 November 1983
United States	14 September 1963	5 September 1969	4 December 1969
Uruguay		26 January 1977	26 April 1977
Uzbekistan		31 July 1995	29 October 1995
Vanuatu		31 January 1989	1 May 1989
Venezuela	13 March 1964	4 February 1983	5 May 1983
Viet Nam		10 October 1979	8 January 1980
Yemen		26 September 1986	25 December 1986
Yugoslavia, (F.R. of)		6 September 2001	27 April 1992
Zambia		14 September 1971	13 December 1971
Zimbabwe		8 March 1989	6 June 1989

Model Legislative Provisions

To implement the Convention on Offences and certain other Acts committed on board Aircraft, signed at Tokyo on 14th September, 1963, and for purposes connected therewith.

Be it enacted as follows:

Short title and commencement

1. This Act may be cited as the Tokyo Convention Act, and shall come into operation on (....)¹.

Interpretation

2. (1) In this Act, unless the context otherwise requires - "aircraft" means any aircraft, whether or not a (....)² - controlled aircraft, other than -

- (a) a military aircraft; or
- (b) an aircraft which, not being military aircraft, is exclusively employed in the service of the Government;

"commander", in relation to an aircraft, means the member of the crew designated as commander of that aircraft by the operator thereof, or, failing such a person the person who is for the time being the pilot in command of the aircraft;

"consular officer" means a consular officer of (....)²; and includes a consul-general, consul, pro-consul and consular agent of (....)²;

"Convention country" means a country which has been declared by the Minister, by notification published in (....)³ to have ratified or acceded to the Tokyo Convention, and has not been so declared to have denounced the Tokyo Convention;

"military aircraft" means an aircraft of the naval, military or air forces of any country;

"Minister" means (....)⁴.

"operator", in relation to any aircraft at any time, means the person who at that time has the management of that aircraft;

"pilot in command", in relation to an aircraft, means a person who for the time being is in charge of the piloting of the aircraft without being under the direction of any other pilot in the aircraft;

"Tokyo Convention" means the Convention on Offences and certain other Acts Committed on board Aircraft, signed at Tokyo on 14th September, 1963.

"(.....)² - controlled aircraft" means an aircraft -

- (a) which is for the time being registered in (.....)², or
- (b) which, being for the time being registered in some other country, is for the time being chartered by demise to a person who, or to persons each of whom, satisfies the following requirements, namely:
 - (i) that he or she is a person qualified to be the owner of a legal or beneficial interest in an aircraft registered in (.....)², and
 - (ii) that he or she resides or has their principal place of business in (.....)²;

(2) For the purposes of this Act, the period during which an aircraft is in flight shall be deemed to include -

- (a) any period from the moment when power is applied for the purpose of the aircraft taking off on a flight until the moment when the landing run (if any) at the termination of that flight ends; and
- (b) for the purposes of section 5 of this Act -
 - (i) any further 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 competent authorities of the country in which the forced landing takes place take over the responsibility for the aircraft and for the persons and property on board the aircraft (being, if the forced landing takes place in (.....)² the time when a police officer arrives at the place of landing),

and any reference in this Act to an aircraft in flight shall include a reference to an aircraft during any period when it is on the surface of the sea or land but not within the territorial limits of any country.

(3) In this Act, unless the context otherwise requires, any reference to a country or the territorial limits thereof shall be construed as including a reference to the territorial waters, if any, of that country.

(4) If the Minister is satisfied that the requirements of Article 18 of the Tokyo Convention have been satisfied (which Article makes provision as to the country which is to be treated as the country of registration of certain aircraft operated by joint air transport organisations or international operating agencies established by two or more Convention countries) the Minister may, by notification published in (.....)³ provide that for the purposes of this Act

such aircraft as may be specified in the notification shall be treated as registered in such Convention country as may be so specified.

Application of criminal law to aircraft

3. (1) Any act or omission taking place on board a (....)² controlled aircraft while in flight elsewhere than in or over (....)² which, if taking place in (....)² would constitute an offence under the law in force in (....)², constitutes that offence:

Provided that this subsection shall not apply to any act or omission which is expressly or impliedly authorised by or under that law when taking place outside (....)².

(2) No proceedings for any offence under the law in force in (....)² committed on board an aircraft while in flight elsewhere than in or over (....)² shall be instituted in (....)² except by or with the consent of the Attorney-General.⁵

(3) The provisions of subsection (2) of this section shall not prevent the arrest, or the issue of a warrant for the arrest, of any person in respect of any offence, or the remanding in custody or on bail of any person charged with any offence.⁶

(4) For the purpose of conferring jurisdiction, any offence under the law in force in (....)² committed on board an aircraft in flight shall be deemed to be committed in (....)².

Provisions as to extradition

4. For the purposes of the application of the (Extradition Act)⁷ to crimes committed on board an aircraft in flight, any aircraft registered in a Convention country shall at any time while that aircraft is in flight be deemed to be within the jurisdiction of that country, whether or not it is for the time being also within the jurisdiction of any other country.

Powers of commander of aircraft

5. (1) The provisions of subsections (2), (3), (4) and (5) of this section shall have effect for the purposes of any proceeding before any court in (....)².

(2) If the commander of an aircraft in flight, wherever that aircraft may be, has reasonable grounds to believe in respect of any person on board the aircraft -

(a) that the person in question has done or is about to do any act on the aircraft while it is in flight which jeopardises or may jeopardise -

(i) the safety of the aircraft or of persons or property on board the aircraft; or

- (ii) good order and discipline on board the aircraft; or
- (b) that the person in question has done on the aircraft while in flight any act which in the opinion of the commander is a serious offence under any law in force in the country in which the aircraft is registered, not being a law of a political nature or based on racial or religious discrimination,

then, subject to subsection (4) of this section, the commander may take with respect to that person such reasonable measures, including restraint of his or her person, as may be necessary -

- (i) to protect the safety of the aircraft or of persons or property on board the aircraft;
- (ii) to maintain good order and discipline on board the aircraft; or
- (iii) to enable the commander to disembark or deliver that person in accordance with subsection (5) of this section,

and for the purposes of paragraph (b) of this subsection any² controlled aircraft shall be deemed to be registered in² whether or not it is in fact so registered and whether or not it is in fact registered in some other country.

(3) Any member of the crew of an aircraft and any other person on board the aircraft may, at the request or with the authority of the commander of the aircraft, and any such member shall if so required by that commander, render assistance in restraining any person whom the commander is entitled under subsection (2) of this section to restrain; and at any time when the aircraft is in flight any such member or other person may, without obtaining the authority of the commander, take with respect to any person on board the aircraft any measures such as are mentioned in subsection (2) of this section which he or she has reasonable grounds to believe are immediately necessary to protect the safety of the aircraft or of persons or property on board the aircraft.

(4) Any restraint imposed on any person on board an aircraft under the powers conferred by this section shall not be continued after the time when the aircraft first thereafter ceases to be in flight unless ; before or as soon as is reasonably practicable after that time the commander of the aircraft causes notification of the fact that a person on board the aircraft is under restraint and of the reasons therefor to be sent to an appropriate authority of the country in which the aircraft so ceases to be in flight, but subject to such notification may be continued after that time -

- (a) for any period (including the period of any further flight) between that time and the first occasion thereafter on which the commander is able with any requisite consent of the appropriate authorities to disembark or deliver the person under restraint in accordance with subsection (5) of this section; or
- (b) if the person under restraint agrees to continue his journey under restraint on board that aircraft.

- (5) The commander of an aircraft -
- (a) if in the case of any person on board the aircraft he or she has reasonable grounds -
- (i) to believe as mentioned in paragraph (a) of subsection (2) of this section; and
 - (ii) to believe that it is necessary so to do in order to protect the safety of the aircraft or of persons or property on board the aircraft or to maintain good order and discipline on board the aircraft,
- may disembark that person in any country in which that aircraft may be; and
- (b) if in the case of any person on board the aircraft he or she has reasonable grounds to believe as mentioned in paragraph (b) of subsection (2) of this section, may deliver that person -
- (i) in (....)² to a police officer or immigration officer; or
 - (ii) in any other country which is a Convention country, to an officer having functions corresponding to the functions either of a police officer or of an immigration officer in (....)².
- (6) The commander of an aircraft -
- (a) if he or she disembarks any person in pursuance of paragraph (a) of subsection (5) of this section, in the case of a (....)²- controlled aircraft, in any country or, in the case of any other aircraft, in (....)², shall report the fact of, and the reason for, that disembarkation to -
- (i) an appropriate authority in the country of disembarkation; and
 - (ii) the appropriate diplomatic or consular office of the country of nationality of that person;
- (b) if he or she intends to deliver any person in accordance with paragraph (b) of subsection (5) of this section in (....)² or, in the case of a (....)²- controlled aircraft, in any other country which is a Convention country, shall before or as soon as reasonably practicable after landing give notification of his or her intention and of the reasons therefor -
- (i) where the country in question is (....)² to a police officer or immigration officer or, in the case of any other country, to an officer having functions corresponding to the functions either of a police officer or of an immigration officer in (....)², and
 - (ii) in either case to the appropriate diplomatic or consular office of the country of nationality of that person,

and any commander of an aircraft who without reasonable cause fails to comply with the requirements of this subsection shall be guilty of an offence⁸ under this Act and shall be liable on conviction to a fine not exceeding (.....)⁹.

Regulations

6. The Minister may make such regulations as appear to be necessary for carrying out or giving effect to the provisions of the Tokyo Convention.

NOTES

1. Date of commencement or procedure by which the Statute is to be brought into force.
2. Name of Country.
3. Name of official government publication.
4. Title or designation of Minister responsible for Civil Aviation.
5. Or other responsible Law Officer. The purpose of this provision is to prevent prosecutions for infringement of this Statute, without the consent of the Government.
6. The purpose of this subsection is to make provision for the detention or other means of control over a person alleged to have committed an offence under this Statute, pending a Governmental decision as to whether he should be prosecuted in respect of the alleged offence.
7. Or other relevant Statute or law.
8. This provision creates an offence, not required by the Convention, which may be committed by an aircraft commander.
9. Maximum penalty.

CHAPTER THREE

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT 1970 (‘Hague Convention’)

1. Although the Tokyo Convention includes certain provisions relating to hijacking of aircraft, they are both general in terms and limited in effect.²⁵ The principal objective of the Tokyo Convention is to ensure that offences and acts which jeopardise the safety of civil aircraft or persons or property, or good order and discipline, on board civil aircraft should not go unpunished because of a lack of jurisdiction over those responsible. To this end, it sets out detailed jurisdictional rules. It does not create or define particular offences; they are left to be determined by domestic law. *Article 11*, and certain supplementary provisions, are the only ones which relate specifically to hijacking. But they do not oblige Parties to prohibit or punish hijacking; they merely require them to take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his or her control of the aircraft, to permit its passengers and crew to continue their journey as soon as practicable, and to return the aircraft and its cargo.

2. These provisions were not nearly enough to combat hijackingS of aircraft. During 1968 and 1969 there was a rapid increase in number, 122 in all. ICAO therefore convened a conference at The Hague which adopted the Convention on 16 December 1970. It entered into force on 14 October 1971. As of September 2002 it had 175 Parties, of which 47 are Commonwealth States. The United Kingdom ratified the Convention on 22 December 1971 in respect also of all its overseas territories. A number of them have since gained their independence, some of which have formally succeeded to the Convention. The text of the Convention is at page 58 below, and the complete list of signatures, ratifications and accessions as of September 2002 is at page 64 below.

Hijacking and piracy contrasted

3. States have long exercised universal jurisdiction²⁶ over piracy. The customary international law on the subject is now codified in *Article 101* of the United Nations Convention on the Law of the Sea 1982 (UNCLOS), which also reflects an extension of the traditional concept of universal jurisdiction over sea pirates by analogy to include certain acts in relation to aircraft. It is necessary therefore to consider briefly whether piracy could include hijacking an aircraft. *Article 101* provides as follows:

‘Piracy consists of any of the following acts:

- (a) Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

²⁵ See p. 20, para. 17 above.

²⁶ For an explanation of the term, see page 4, Para 8 above.

- (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any Party;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in sub-paragraph (a) or sub-paragraph (b) of this article.'

Article 105 of UNCLOS provides for universal jurisdiction over pirates. Nevertheless, the inadequacy of the modern law of piracy as a means of combating aerial hijacking will be immediately apparent. In particular, the following matters limit its effectiveness:

- (1) Piracy must be committed ‘for private ends’. While there have been examples of aerial hijackings which have been performed for private ends, usually to extort money, the majority have been committed for overtly political objectives. Consequently they do not constitute piracy.
- (2) Piracy must take place on (or presumably over) the high seas or in a place outside the jurisdiction of any State. Consequently hijacking in national airspace is not piracy.
- (3) Piracy must be directed by the crew or passengers of one ship or aircraft against another ship or aircraft. This would exclude virtually all recorded instances of aerial hijacking.

Object and scope of the Convention

4. The approach adopted by the Convention is very different from that of the Tokyo Convention. The Hague Convention begins by establishing an offence of hijacking (*Article 1*). It then imposes an obligation on the Parties to make the offence punishable by severe penalties (*Article 2*). Each Party is required to take such measures as may be necessary to establish its jurisdiction over the offence, and any other act of violence against the passengers or crew of an aircraft in certain defined circumstances (*Article 4*). Each Party, if satisfied that the circumstances so warrant, is under a duty to take an alleged offender into custody or to take other measures to secure his or her presence (*Article 6*). When an alleged offender is found in the territory of a Party, if it does not extradite it must submit the case to its competent authorities for the purpose of prosecution (*Article 7*). The Convention also deals comprehensively with questions of extradition (*Article 8*).

5. The Convention applies only to civil aircraft, not to aircraft used in military, customs or police services (*Article 3(2)*). This provision is identical to that contained in *Article 1(4)* of the Tokyo Convention.²⁷

6. Generally, the Hague Convention applies 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 Party where the aircraft is registered (*Article 3(3)*). For this purpose the scheduled destination is irrelevant; if a case falls within

²⁷ See page 12, para 3 above, about the civil/military distinction.

the general rule in the article it is immaterial whether the aircraft is on an international or a domestic flight. Consequently the Convention will apply to acts on board an aircraft registered in Party A during a domestic flight in the territory of that Party if the point of actual landing is, due to the hijacking, outside that territory. The Convention will also apply to acts on board an aircraft registered in Party A during a flight between two points in the territory of Party B. To this general rule there exist a number of exceptions which will be considered subsequently.

The offence

7. *Article 1* provides that:

'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").'

(Under *Article 2* each Party undertakes to make the offence punishable by severe penalties.) The component elements of the principal offence are therefore:

- (1) Seizure or exercise of control of an aircraft or an attempt to do so;
- (2) Seizure or exercise of control or an attempt by force or threat of force or by any other form of intimidation;
- (3) Seizure or exercise of control or an attempt that is unlawful;
- (4) Seizure or exercise of control or an attempt on board an aircraft in flight.

The offence is very similar to the notion of wrongful interference with aircraft in *Article 11* of the Tokyo Convention, although that Convention created no offence. A further important difference between the two provisions is that the Hague Convention makes provision for the liability of accomplices. We will now consider the four elements in detail.

(a) Seizure or exercise of control of an aircraft

8. There must be a seizure of, or the exercise of control over, an aircraft, or an attempt to do so. The expressions 'seizure' and 'exercise of control' are not terms of art, and there is no point in attempting to distinguish between seizure or exercise of control. Taken together, they clearly cover, *inter alia*, cases where a pilot is replaced by a hijacker, and where a pilot is ordered to follow the hijacker's instructions, either through the threat or use of force against the pilot or other members of the crew, passengers or, indeed, the aircraft itself.

9. The offence can only be committed by a person *on board the aircraft*. This limits the scope of the offence, since the threat or use of force must come from *within the aircraft*. Consequently the offence does not extend to a case where an aircraft is forced to change course by the threat or application of force from another

aircraft. Similarly, a person would not commit the offence if he or she leaves explosives on board an aircraft before the flight commences and then, through radio contact from the ground to the aircraft in flight, threatens to detonate the explosives unless his or her instructions are followed. In such a case, many legal systems would apply a notion of constructive presence and thereby deem the person to have been on board the aircraft in flight, but there is no indication that the offence, as defined in the Convention, was intended to extend to such a case. However, such conduct would now fall within the scope of the Montreal Convention, considered in detail in Chapter Four.

(b) *Use or threat of force or any other form of intimidation*

10. The hijack of an aircraft will constitute an offence only if it is committed by the use or threat of force or by any other form of intimidation. Many hijackings are accomplished by the threat of force rather than its use, although there have been many where force was used, and passengers and members of the crew have been killed or wounded, most dramatically on 11 September 2001. Both categories are included in the offence. The threat of force contemplates all cases where the use of force or violence is threatened against members of the crew or passengers, or the aircraft itself. The offence may also extend to a threat to use force against persons or property not on board the aircraft, provided that the threat was made by a person *on board the aircraft* and for the purpose of seizing or taking control of it. It is doubtful whether the words ‘or by any other form of intimidation’ extend the scope of the offence since such conduct is likely to involve the threat of force, although it is possible that a hijacker might attempt to gain control of an aircraft by making a threat to the pilot which falls short of a threat of force e.g. blackmail.

11. Certain other means of seizure or exercise of control appear to fall outside the offence, for example, if the crew of an aircraft were bribed to fly it to a destination other than its scheduled destination; similarly if the crew decide to fly the aircraft to a different destination for an unauthorised purpose. Although there may be an unlawful exercise of control over the aircraft, in the absence of the threat or use of force the case falls outside *Article 1*; as it would when control over an aircraft is gained by deception, provided that the threat or use of force was not subsequently used to retain control of the aircraft.

(c) *Illegality of threat or use of force*

12. The inclusion of ‘unlawfully’ in *Article 1* serves to emphasize that the conduct must be without legal excuse or justification. Proper acts of members of the crew, police, sky-marshals or members of special forces to regain control of an aircraft seized by hijackers would obviously not constitute an offence. It is not clear by which legal system the legality of such conduct is to be judged. However, conduct which is justifiable in the law of the Party of registration of the aircraft would probably fall outside the scope of *Article 1*.

(d) *On board an aircraft in flight*

13. An offence can be committed only on board an aircraft ‘in flight’. For this purpose, 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 (*Article 3 (1)*). This conforms to the wider

of the two definitions of ‘in flight’ in the Tokyo Convention.²⁸ In addition, in the case of a forced landing an aircraft is deemed to be in flight under the Hague Convention until the competent authorities take over the responsibility for the aircraft and for persons and property on board (*Article 3(1)*).

14. There have been a number of reported incidents where an attempt was made to hijack an aircraft during the embarkation of passengers and before all the external doors of the aircraft were closed. Such conduct does not constitute an offence within *Article 1*. But the consequences of the lacuna are not as serious as might at first appear. If the attempt is unsuccessful and the hijacker apprehended, it is entirely appropriate that the prosecution should be carried out under the local law. On the other hand, if the attempt is successful and results in the closing of all the external doors of the aircraft before take-off, an offence under *Article 1* will be committed because the attackers would continue to exercise control over an aircraft which, as a matter of law at least, is then considered to be in flight. However, although the matter is not entirely free from doubt, it appears to follow from *Article 3(3)* that an offence within the Convention is committed in such circumstances only if the closing of the external doors is followed by the take-off of the aircraft.

Accomplices

15. *Article 1* makes accomplices equally liable for the offence. Any person who is an accomplice of a person who commits, or attempts to commit, the offence, commits it as well, provided that person’s acts also take place *on board an aircraft in flight* (*Article 1(b)*). This is clear from the opening words - ‘[a]ny person who on board an aircraft in flight’ – which are clearly intended to qualify both sub-paragraphs (a) and (b). For example, the person who conceals guns or explosives on board an aircraft, but leaves it before the flight commences, does not commit an offence within *Article 1*. But, such conduct might well constitute an offence contrary to local law, and is not likely to give rise to the jurisdictional problems that might arise from conduct on board an aircraft in flight. Such action would also amount to an offence under the Montreal Convention.

Establishment of jurisdiction

16. *Article 4* provides that:

‘1. Each [Party] 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 [with that Party];
- (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 [the territory of that Party].

²⁸ See p. 15, para 13, above.

2. Each [Party] 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 [Parties] mentioned in paragraph 1 of this Article.

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

This article is of central importance to the scheme of the Convention and of later conventions. Paragraphs 1 and 2 require Parties to establish their jurisdiction over the offence in certain specified circumstances, which are wide in ambit. An extension of the criminal law of the Parties is required. First, each Party is under a duty to make hijacking an offence contrary to its domestic law, if it is not already. Secondly, each Party must ensure that that part of its domestic law extends to such conduct which takes place in the circumstances set out in paragraphs 1 and 2. Thirdly, each Party must ensure that its domestic courts are competent to exercise jurisdiction over such conduct occurring in such circumstances. *Article 4* thus requires Parties to establish their jurisdiction in four sets of circumstances. It is convenient to consider each of these in turn.

A. *Conduct on board an aircraft registered with the Party*

17. Subparagraph 1(a) requires each Party to 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, when the offence is committed on board an aircraft registered with that Party. This applies wherever the aircraft is situated at the time of the relevant acts, whether in the airspace of the Party of registration, in the airspace of another Party or, indeed, outside the territory of any Party.

18. Special provision is made in *Article 5* for the case of aircraft which are subject to joint or international registration. This corresponds with *Article 18* of the Tokyo Convention.²⁹ However, in cases concerning such joint air transport operating organisations or international operating agencies the Hague Convention does 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* Party if that Party is one of the States participating in the operation of the aircraft (*Article 3(4)*). This is an exception to the general rule in *Article 3(3)* (see paragraph 14 above).

B. *Aircraft landing in the territory of a Party with a hijacker on board*

19. Sub-paragraph 1(b) requires each Party to 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, when the aircraft on board which the offence was committed lands in its territory with the alleged offender still on board. This contemplates the exercise of jurisdiction in a wide range of circumstances. It extends to conduct on board an aircraft whether registered with that Party or not. Furthermore, the provision applies

²⁹ See p. 14, para, 11, above.

to conduct on board an aircraft which subsequently lands in the territory of a Party with a hijacker on board without regard to the location of the aircraft at the time of the acts were committed. If they took place on board an aircraft which was at that time in the territorial airspace of the Party in whose territory it subsequently landed, the jurisdiction to be exercised by that Party over such acts would not be an extra-territorial jurisdiction.³⁰ This would normally be the case when a hijacking was successful because the offence would continue in the territorial airspace of the Party of landing until the flight ended.

20. However it would not be the case when an attempted hijacking was unsuccessful and the offence had ceased before the aircraft entered the airspace of the Party of landing. Consequently, the provision is sufficiently wide to require a Party to establish jurisdiction over conduct which has no connection with it save for the happy fact that the aircraft subsequently lands in its territory with the inept hijacker on board. For example, an aircraft registered with Party A, and crewed by and carrying persons of its nationality, is the subject of an attempted hijack by nationals of that Party in its airspace, or over the high seas. After the hijackers are overpowered, the aircraft enters the airspace of Party B and lands there. The Convention requires that the domestic law of Party B to be such that it can exercise jurisdiction over the attackers. In this case there are present none of the traditional linking factors on which the exercise of extra-territorial jurisdiction is generally justified. Consequently, the provision may be regarded as having established a new basis for the exercise of extra-territorial jurisdiction founded on a new jurisdictional, link. This helps by plugging a number of jurisdictional gaps, and is justifiable both by reference to the nature of the offence and to the fact that in such circumstances the Party of landing is in the best position to apprehend and punish the wrongdoers.

C. Conduct on board an aircraft leased without crew to a lessee who has his or her principal place of business or permanent residence in the territory of the Party

21. Paragraph 1(c) requires each Party to 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, when the offence is committed on board an aircraft *leased without crew* to a lessee who has his or her principal place of business or, if the lessee has no such place of business, permanent residence, in the territory of that Party. This casts the net of jurisdiction even wider, so as to include conduct on board aircraft which, whether or not they are registered with a Party, are effectively operated by a person with his or her principal place of business or, if none, permanent residence in the territory of that Party. The Party from whose territory the aircraft is operated may well have a more substantial connection with the operation of the aircraft, and consequently a greater interest in the exercise of jurisdiction, than the Party of registration. However, it is not entirely clear why the provision is limited to cases of aircraft leased without crew ('dry lease'). While it is arguable that aircraft leased with crew ('wet lease') might have a stronger connection with the Party of registration, the Party from which it is substantially operated would nevertheless retain a strong interest in having jurisdiction.

³⁰ As to extra-territorial jurisdiction, see p. 3, paras. 7 to 11, above.

22. While jurisdiction established in accordance with paragraph 1(c) may be exercised in relation to intra-territorial acts, for example where the relevant conduct takes place on an dry-leased aircraft in the territorial airspace of the Party where the lessee has his or her principal place of business, it is clear that it also extends to extra-territorial activities. Furthermore, it envisages the possible exercise of extra-territorial jurisdiction in circumstances where there are present none of the linking factors on which the exercise of extra-territorial jurisdiction is usually explained. Consequently, as in the case of paragraph 1(b), the provision may be regarded as having established a new basis for the exercise of extra-territorial jurisdiction founded on a new jurisdictional link.

D. Alleged offender present in the territory of a Party

23. *Article 4(2)* requires each Party to take such measures as may be necessary to establish its jurisdiction over the offence where the alleged offender is present in its territory and it does not extradite the person to:

- (a) the Party with which the aircraft is registered;
- (b) the Party in whose territory the aircraft landed with the alleged offender still on board; or
- (c) the Party in whose territory a person to whom the aircraft was leased without crew has his or her principal place of business or, if none, where he or she has permanent residence.

This is intended to create an essential jurisdictional longstop. It requires Parties to extend their jurisdiction in such a way that even if a hijacker evades arrest by those Parties directly concerned with the hijacking, and is not extradited to one of them, the person may be prosecuted for the offence by any Party in whose territory he or she is subsequently found. Since there are now 175 Parties, the possibility of hijackers escaping justice is considerably reduced.

24. The provision is considerably wider than that in *Article 4(1)(b)*, which applies only in the case of a hijacker landing in the territory of a Party on board the aircraft on which the offence was committed. The present provision applies also when a hijacker is subsequently found in the territory of *any* Party. The extension of extra-territorial jurisdiction envisaged by *Article 4(2)* is potentially enormous since it requires a Party to establish its jurisdiction in circumstances where there is no connection between the alleged offence and that Party, save that the alleged offender is subsequently found there.

25. The extension of the ambit of a Party's criminal law so as to include relevant conduct in the circumstances contemplated by *Article 4(2)* effectively requires each Party to establish in its domestic law an offence of hijacking which may be committed by any person on board any aircraft anywhere in the world. The obligation imposed by the Convention on a Party so to extend its jurisdiction is limited to cases where the Party does not extradite the alleged offender to another Party. However, arrangements for the extradition or the return of fugitive offenders are not complete or so perfect that a Party could ever be certain that it would be able to extradite an alleged hijacker apprehended in its territory. Furthermore, a Party in whose territory the person was apprehended may not receive a request for extradition from another Party.

26. As a result, *Article 4(2)* comes very close to making the offence of hijacking an offence subject to universal jurisdiction.³¹ The conduct defined in *Article 1* constitutes an offence contrary to the law of each of the Parties regardless of the nationality of the alleged offender, the State of registration of the aircraft on board which the alleged offence took place, or the location of the aircraft at the time the offence was committed. This enormous extension of the extra-territorial jurisdiction of the Parties was, and remains, justifiable because of the nature of hijacking, which necessarily imperils the common interests of all States in preserving the safety of civil aviation. The extension and exercise of jurisdiction, in the circumstances contemplated in *Article 4*, are essential if the Convention's objectives of deterring and punishing such activities are to be achieved.

27. Such a result is achieved by, for example, section 1(1) of United Kingdom Aviation Security Act 1982 (re-enacting a provision of the Hijacking Act, 1971) which provides:

‘A person on board an aircraft in flight who unlawfully, by the use of force or by threats of any kind, seizes the aircraft or exercises 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 the United Kingdom or elsewhere’.

This is then qualified with regard to non-civil aircraft, in accordance with the Convention, but nevertheless establishes an offence of extremely wide ambit. It was necessary that the intended extra-territorial application of the provision be expressly stipulated in order to rebut the presumption against extra-territorial effect normally applied by English (and other) courts when interpreting legislation.³²

28. Finally, in this context reference must be made to *Article 4(3)* which provides that the Convention does not exclude any criminal jurisdiction exercised in accordance with national law. Although Article 3(3) of the Tokyo Convention has a similar provision, it is difficult to see why this provision was included in the Hague Convention, and its effect is not entirely clear. It seems merely to confirm that the jurisdictional provisions of the Convention are not intended to prejudice the other bases on which Parties have claimed to exercise jurisdiction over hijackers, and thus the Parties are free to exercise jurisdiction in circumstances not specified in the Convention. *Article 4(3)* was copied in the Montreal Convention, and later conventions, and was important for the *Lockerbie* prosecution (see page 80 below).

29. As with the Tokyo Convention and later conventions, the Hague Convention makes no provision for priority of competing jurisdictions.³³

The Convention and non-Parties

30. What effect, if any, do the jurisdictional provisions of the Convention have on non-Parties? Each Party is required to establish its jurisdiction over an alleged offender ‘present in its territory’. There is no requirement that the person be a national or have *any* connection with *any* Party. This is essential for the

³¹ See p. 4, para. 8, above.

³² See also pp. 6, paras. 15-16, above

³³ See p. 14, para. 10, above.

effectiveness of the Convention. But it has sometimes been asked whether these jurisdictional provisions can apply to the nationals of a State that is not a Party (often referred to as a ‘third State), when the act is done in the territory of that State, or on a ship or aircraft registered with it, and the person has no connection with any of the Parties. This point is dealt with at page 6, paragraph 17, above.

31. The application of the Convention to aircraft registered in third States is established not only by the plain meaning of the provisions of the Convention, but also by its *travaux préparatoires* (negotiating history). It was the clear intention of the Hague Conference that the Hijacking Convention should apply to all aircraft wherever registered. Similarly the Convention was intended to apply to the conduct of persons on board aircraft in flight, regardless of whether they are nationals of a Party. The Convention therefore requires a Party to establish jurisdiction over an alleged hijacker found in its territory in respect of activities which have no jurisdictional link with any Party. Let us take an extreme example. Ms Smith, a national of State A, hijacks an aircraft registered in State B in the airspace of State C. She escapes and is subsequently arrested in the territory of State Z. States A, B and C are *not* Parties to the Convention, but State Z *is* a Party. If it does not extradite her to A, B or C, or to another Party, it is obliged to submit the case to its competent authorities for the purpose of prosecution (see *Article 7*, and paragraph 35 below).

Exercise of jurisdiction

32. When any of the acts which constitute the offence of hijacking have occurred or are about to occur, Parties are under a duty to take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve the commander’s control of the aircraft (*Article 9(1)*). Any Party in whose territory the aircraft or its passengers and crew are present must facilitate the continuation of the journey of the passengers and crew as soon as practicable and must, without delay, return the aircraft and its cargo to the persons lawfully entitled to possession (*Article 9(2)*). This provision closely resembles *Article 11* of the Tokyo Convention.

33. A Party, in whose territory an alleged offender is present, is required immediately to make a preliminary enquiry into the facts (*Article 6(2)*). ‘Upon being satisfied that the circumstances so warrant’, that Party must then take the person into custody or take other measures to ensure his or her presence (*Article 6(1)*). The quoted phrase gives the Party a discretion, but it must be exercised reasonably and in good faith. It does not require the Party to arrest any person who is alleged to be an offender; there must be some grounds for the belief. Conversely, the Party cannot decline to take action for, say, political reasons. *Article 6(1)* further provides that the custody or other measures shall be as provided in the law of the Party.

34. The treatment in accordance with the national as opposed to an international, standard of alleged offenders who are aliens has been considered in detail in the context of the Tokyo Convention,³⁴ and the conclusions there apply equally in relation to the Hague Convention. However, the following should be noted in the context of that Convention:

³⁴ See p. 19, para. 26.

- (a) The national standard applies only to custody or other measures taken to ensure the presence of an alleged offender (*Article 6(1)*);
- (b) The custody or other measures to ensure the presence of an alleged offender may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted (*Article 6(1)*);
- (c) Any person in custody must be assisted in communicating immediately with the nearest appropriate representative (usually the consul) of the Party of which the person is a national (*Article 6(3)*);
- (d) When a Party has taken a person into custody it must immediately notify the fact that such person is in custody, and the circumstances which warrant detention, to:
 - (i) the Party of registration of the aircraft;
 - (ii) where the alleged offence took place on board an aircraft leased without crew, the Party in whose territory the lessee has his or her principal place of business, or, if none, permanent residence;
 - (iii) the Party of nationality of the detained person;
 - (iv) if it considers it advisable, any other interested Parties (*Article 6(4)*).
- (e) The findings of the preliminary inquiry must be reported promptly to the Parties listed in paragraph (iv) above, with an indication whether it is intended to exercise jurisdiction (*Article 6(4)*).

Aut dedere aut judicare

35. *Article 7* is vital to the scheme of the Convention, and of later ones. It provides that a Party in the territory of which the alleged offender is found shall, if it does not extradite, 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. The authorities are required to take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that Party. The effect of this provision is that whenever an alleged offender is found in the territory of one of the Parties, that Party must either extradite him or her or submit the matter to its prosecuting authorities. As a result, no hijacker can find refuge with any of the Parties. (See also page 8, paragraph 22 above.)

36. Parties must afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offence or other acts of violence against passengers or crew committed by the alleged offender in connection with the offence (*Article 10(1)*). However, this duty is without prejudice to any obligations arising under any other treaty relating to mutual assistance in criminal matters.

37. If the alleged offender is found in the territory of a Party other than the Party of registration of the aircraft, *Articles 6, 7, 8 and 10* apply whatever the place of take-off or actual landing (*Article 3(5)*).

38. Each Party is under a duty to report to the Council of ICAO as promptly as possible any relevant information in its possession concerning the circumstances in which the hijacking took place and the action taken to restore or preserve the control of the commander of the aircraft, to facilitate the continuation of the journey by the passengers and crew, and to return the aircraft and its cargo to the persons lawfully entitled to possession. In addition, each Party is required to notify the Council of any measures taken in relation to the alleged offender, and, in particular, the results of any extradition or other legal proceedings (*Article 11*).

Extradition

39. *Article 8* contains the standard extradition provisions (see page 8 above for details). We have seen that the Convention makes no provision for priority in the exercise of jurisdiction by Parties.³⁵ Similarly, the Convention does not attempt to establish a scheme of priority in the matter of extradition.

40. The provisions dealing with extradition are a further exception to the general rule as to the scope of the Convention. They apply whatever the place of take-off or the place of actual landing of the aircraft on board which the offence was allegedly committed, if the alleged offender is found in the territory of a Party other than the Party of registration of that aircraft (*Article 3(5)*).

Disputes

41. *Article 12* contains the usual provision for the settlement of disputes between two or more Parties concerning the interpretation or application of the Convention.³⁶

Reservations

42. In addition to the right under *Article 12* to make a reservation to that article, reservations may also be made to other articles provided they are compatible with the object and purpose of the Convention.³⁷ None have been made.

Accession

43. The Convention is open to accession by any State which did not sign it before it came into force on 14 October 1971 (*Article 13(1)*). The instrument of accession must be deposited with the Depositary Governments, namely the Governments of the Russian Federation, the United Kingdom and the United States (*Article 13(2)*), though it is sufficient to deposit with any one of them. A Party may denounce the Convention (*Article 14*).

Succession

44. Alternatively, a State that has gained its independence may be able to become a Party by succession.³⁸

³⁵ See para. 29 above

³⁶ See p. 10 above for details.

³⁷ See p. 11 above for details.

³⁸ See p. 11 above.

Implementation

45. Legislation will normally be needed to give effect to the Convention in domestic law. Model legislative provisions are at page 71 below. It must be emphasised, however, that careful consideration will have to be given by each State that is considering becoming a party to the Convention as to its precise needs for the content of the legislation.

Hague 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 State 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 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 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, anyone 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 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.

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.

**CONVENTION FOR THE SUPPRESSION
OF UNLAWFUL SEIZURE OF AIRCRAFT
SIGNED AT THE HAGUE ON 16 DECEMBER 1970**

Entry into force: The Convention entered into force on 14 October 1971.

Status: 175 Parties

State	Date of signature	Date of deposit of Instrument of Ratification, Accession or Succession
Afghanistan	16 December 1970	29 August 1979
Albania		21 October 1997
Algeria		6 October 1995
Angola		12 March 1998
Antigua and Barbuda		22 July 1985
Argentina	16 December 1970	11 September 1972
Australia	15 June 1971	9 November 1972
Austria	28 April 1971	11 February 1974
Azerbaijan		3 March 2000
Bahamas		13 August 1976
Bahrain		20 February 1984
Bangladesh		28 June 1978
Barbados	16 December 1970	2 April 1973
Belarus (3)	16 December 1970	30 December 1971
Belgium	16 December 1970	24 August 1973
Belize		10 June 1998
Benin	5 May 1971	13 March 1972
Bhutan		28 December 1988
Bolivia		18 July 1979
Bosnia and Herzegovina		15 August 1994
Botswana		28 December 1978
Brazil	16 December 1970	14 January 1972
Brunei Darussalam		16 April 1986
Bulgaria	16 December 1970	19 May 1971
Burkina Faso		19 October 1987
Burundi	17 February 1971	
Cambodia	16 December	8 November 1996

	1970	
Cameroon		14 April 1988
Canada	16 December 1970	20 June 1972
Cape Verde		20 October 1977
Central African Republic		1 July 1991
Chad	27 September 1971	12 July 1972
Chile	4 June 1971	2 February 1972
China		10 September 1980
Colombia	16 December 1970	3 July 1973
Comoros		1 August 1991
Congo		24 November 1989
Costa Rica	16 December 1970	9 July 1971
Côte d'Ivoire		9 January 1973
Croatia		8 June 1993
Cuba		27 November 2001
Cyprus		5 July 1972
Czech Republic		14 November 1994
Democratic People's Republic of Korea		28 April 1983
Democratic Republic of the Congo		6 July 1977
Denmark	16 December 1970	17 October 1972
Djibouti		24 November 1992
Dominican Republic	29 June 1971	22 June 1978
Ecuador	19 March 1971	14 June 1971
Egypt		28 February 1975
El Salvador	16 December 1970	16 January 1973
Equatorial Guinea	4 June 1971	2 January 1991
Estonia		22 December 1993
Ethiopia	16 December 1970	26 March 1979
Fiji	5 October 1971	27 July 1972
Finland	8 January 1971	15 December 1971
France	16 December	18 September 1972

	1970	
Gabon	16 December 1970	14 July 1971
Gambia	18 May 1971	28 November 1978
Georgia		20 April 1994
Germany	16 December 1970	11 October 1974
Ghana	16 December 1970	12 December 1973
Greece	16 December 1970	20 September 1973
Grenada		10 August 1978
Guatemala	16 December 1970	16 May 1979
Guinea		2 May 1984
Guinea-Bissau		20 August 1976
Guyana		21 December 1972
Haiti		9 May 1984
Honduras		13 April 1987
Hungary	16 December 1970	13 August 1971
Iceland		29 June 1973
India	14 July 1971	12 November 1982
Indonesia	16 December 1970	27 August 1976
Iran, Islamic Republic of	16 December 1970	25 January 1972
Iraq	22 February 1971	3 December 1971
Ireland		24 November 1975
Israel	16 December 1970	16 August 1971
Italy	16 December 1970	19 February 1974
Jamaica	16 December 1970	15 September 1983
Japan	16 December 1970	19 April 1971
Jordan	9 June 1971	18 November 1971
Kazakhstan		4 April 1995
Kenya		11 January 1977
Kuwait	21 July 1971	25 May 1979
Kyrgyzstan		25 February 2000

Lao People's Democratic Republic	16 February 1971	6 April 1989
Latvia		23 October 1998
Lebanon		10 August 1973
Lesotho		27 July 1978
Liberia		1 February 1982
Libyan Arab Jamahiriya		4 October 1978
Liechtenstein	24 August 1971	23 February 2001
Lithuania		4 December 1996
Luxembourg	16 December 1970	22 November 1978
Madagascar		18 November 1986
Malawi		21 December 1972
Malaysia	16 December 1970	4 May 1985
Maldives		1 September 1987
Mali		29 September 1971
Malta		14 June 1991
Marshall Islands		31 May 1989
Mauritania		1 November 1978
Mauritius		25 April 1983
Mexico	16 December 1970	19 July 1972
Monaco		3 June 1983
Mongolia	18 January 1971	8 October 1971
Morocco		24 October 1975
Myanmar		22 May 1996
Nauru		17 May 1984
Nepal		11 January 1979
Netherlands	16 December 1970	27 August 1973
New Zealand	15 September 1971	12 February 1974
Nicaragua		6 November 1973
Niger	19 February 1971	15 October 1971
Nigeria		3 July 1973
Norway	9 March 1971	23 August 1971
Oman		2 February 1977
Pakistan	12 August 1971	28 November 1973

Palau		3 August 1995
Panama	16 December 1970	10 March 1972
Papua New Guinea		15 December 1975
Paraguay	30 July 1971	4 February 1972
Peru		28 April 1978
Philippines	16 December 1970	26 March 1973
Poland	16 December 1970	21 March 1972
Portugal	16 December 1970	27 November 1972
Qatar		26 August 1981
Republic of Korea		18 January 1973
Republic of Moldova		21 May 1997
Romania	13 October 1971	10 July 1972
Russian Federation	16 December 1970	24 September 1971
Rwanda	16 December 1970	3 November 1987
Saint Lucia		8 November 1983
Saint Vincent and the Grenadines		29 November 1991
Samoa		9 July 1998
Saudi Arabia		14 June 1974
Senegal	10 May 1971	3 February 1978
Seychelles		29 December 1978
Sierra Leone	19 July 1971	13 November 1974
Singapore	8 September 1971	12 April 1978
Slovakia		13 December 1995
Slovenia		27 May 1992
South Africa	16 December 1970	30 May 1972
Spain	16 March 1971	30 October 1972
Sri Lanka		30 May 1978
Sudan		18 January 1979
Suriname		27 October 1978
Swaziland		27 December 1999
Sweden	16 December 1970	7 July 1971

Switzerland	16 December 1970	14 September 1971
Syrian Arab Republic		10 July 1980
Tajikistan		29 February 1996
Thailand	16 December 1970	16 May 1978
The former Yugoslav Republic of Macedonia		7 January 1998
Togo		9 February 1979
Tonga		21 February 1977
Trinidad and Tobago	16 December 1970	31 January 1972
Tunisia		16 November 1981
Turkey	16 December 1970	17 April 1973
Turkmenistan		25 May 1999
Uganda		27 March 1972
Ukraine	16 December 1970	21 February 1972
United Arab Emirates		10 April 1981
United Kingdom	16 December 1970	22 December 1971
United Republic of Tanzania		9 August 1983
United States	16 December 1970	14 September 1971
Uruguay		12 January 1977
Uzbekistan		7 February 1994
Vanuatu		22 February 1989
Venezuela	16 December 1970	7 July 1983
Vietnam		17 September 1979
Yemen		29 September 1986
Yugoslavia, F.R. of		23 July 2001
Zambia		3 March 1987
Zimbabwe		6 February 1989

Model Legislative Provisions

To implement the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16th December 1970, and for purposes connected therewith.

NOTE

No specific penalties for the offences have been included because of the variation in sentencing practice between states. However the Convention requires penalties that reflect the seriousness of the offence and therefore maximum penalties should be set including, if appropriate, a life sentence.

Be it enacted as follows:-

Short title and commencement

1. This Act may be cited as the Hijacking Act, and shall come into operation on (.....)¹.

Interpretation

2. (1) In this Act, unless the context otherwise requires –

"act of violence" means -

- (a) any act done in (.....)² which constitutes the offence of (.....)³, and
- (b) any act done outside (.....)², which, if done in (.....)², would constitute such an offence as is mentioned in paragraph (a);

"the Convention" means the Convention for the Suppression of Unlawful Seizure of Aircraft signed at The Hague on 16 December 1970;

"landing" includes alighting on water;

"military service" includes naval and air force service;

"unlawfully" -

- (a) in relation to the commission of an act in (.....)², means an offence that is (apart from this Act) constituted under any law in force in (.....)²; and
- (b) in relation to the commission of an act outside (.....)², means the Commission of the act that would (apart from this Act) have been an offence under any law in force in (.....)² had it been committed in (.....)².

(2) For the purposes of this Act the period during which an aircraft is in flight shall be deemed to include any period from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation, and, in the case of a forced landing, any period until the competent authorities take over responsibility for the aircraft and for persons and property on board.

Hijacking

3. (1) Subject to subsection (2) a person on board an aircraft in flight who unlawfully, by the use of force or by threats of any kind, seizes the aircraft or exercises control of it commits the offence of hijacking, whatever his or her nationality or citizenship, whatever the State in which the aircraft is registered and whether the aircraft is in (.....)² or elsewhere.
- (2) If the aircraft is used in military, customs or police service, subsection (1) shall not apply unless -
- (a) the person seizing or exercising control of the aircraft is a citizen of (.....)²; or
 - (b) the act is committed in or over (.....)²; or
 - (c) the aircraft is used in the military, customs or police service of (.....)²⁴.
- (3) A person who commits the offence of hijacking shall be guilty of an offence under this Act.

Violence against passengers or crew

4. Any act of violence against the passengers or crew of any aircraft in flight done by any person in connection with the offence of hijacking committed or attempted on board such aircraft shall be deemed to have been committed in (.....)² and shall constitute an offence punishable under the law in force in (.....)² applicable thereto, wherever the act of violence was committed, whatever the State of registration of the aircraft and whatever the nationality or citizenship of the offender.

Abetting the commission of acts outside (.....)²

5. Any person in (.....)² who abets the commission elsewhere of any act which would, but for subsection (2) of section 3, be the offence of hijacking shall be guilty of an offence under this Act.⁴

Penalty

6. Any person guilty of an offence under this Act shall be liable on conviction to be punished with (.....)⁵.

Consent for prosecution

7. No prosecution shall be instituted under this Act without the written consent of (.....)⁶.

Extradition

8. (1) There shall be deemed to be included in [the list of] extradition crimes [described in the (Extradition Act)⁷] offences under this Act and attempts to commit such offences.
- (2) Where no extradition treaty is in force between (....)² and a State which is party to the Convention, a notification (....)⁸ may be made applying the (Extradition Act)⁷ as if the Convention were an extradition treaty between (....)² and that State, but where the (Extradition Act)⁷ is so applied, it shall have effect as if the only extradition crimes within the meaning of that Act were offences under this Act and attempts to commit such offences.
- (3) For the purposes of the (Extradition Act)⁷, any act, wherever committed, which -
 - (a) is an offence under this Act or an attempt to commit such an offence, or attempt but for subsection (2) of section 3; and
 - (b) is an offence against the law of any State in the case of which the (Extradition Act)⁷ has been applied by (....)⁹,

shall be deemed to be an offence within the jurisdiction of that State.

NOTES

1. Date of commencement or procedure by which the Statute is to be brought into force.
2. Name of acceding State.
3. List relevant offences e.g. offences involving firearms; murder; manslaughter; assault occasioning actual bodily harm; battery.
4. The Hague Convention is intended to apply only to civil aircraft and provides that it shall not apply to aircraft used in military, customs or police services. (Article 3(2).) This provision is, therefore, not required in order to ensure compliance with the Hague Convention. However, similar provisions have been included in enacting legislation in a number of Commonwealth States.
5. Maximum penalty.
6. The Attorney General or other responsible law Officer. The purpose of this provision is to prevent prosecutions for infringement of this Statute without the consent of the Government.
7. Or other relevant Statute or law.
8. Specify how notification is to be made e.g. by publication in official government publication.
9. Specify manner of application e.g. by publication in official government publication.

CHAPTER FOUR

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF CIVIL AVIATION 1971 (‘Montreal Convention’)

1. The offence established by the Hague Convention requires the seizure of, or other exercise of control over, an aircraft in flight, or an attempt to do so. It can be committed only by a person on board the aircraft. Similarly, the conduct of an accomplice must also take place on board. These limitations restrict the scope of the offence. In particular they exclude from its ambit cases where force is applied from outside the aircraft. Moreover, the offence under the Hague Convention does not extend to acts of sabotage and destruction of aircraft. Unhappily, such conduct has occurred frequently. Between 1949 and 1970, 22 aircraft were destroyed and over 400 persons killed as a result of the detonation of explosives on board. A further treaty was therefore needed to co-ordinate means for the deterrence and punishment of such acts.

2. ICAO convened a diplomatic conference at Montreal and on 23 September 1971 it adopted the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. The Convention entered into force on 26 January 1973. As of September 2002 it had 176 Parties, including 47 Commonwealth States. The United Kingdom ratified the Convention on 25 October 1973 also in respect of all its overseas territories. A number of them have since attained independence, some of which have formally succeeded to the Convention. The text of the Convention is at page 83 below, and the complete list of signatures, ratifications and accessions, territorial extensions and successions as of September 2002 is at page 90 below.

Object and scope of the Convention

3. The approach adopted by the Montreal Convention is very similar to that of the Hague Convention and many of their provisions are identical. The Montreal Convention begins by establishing a number of offences (*Article 1*). Each Party is required to take such measures as may be necessary to establish its jurisdiction over the offences in certain defined circumstances (*Article 4*). Each Party, if satisfied that the circumstances so warrant, is under a duty to take an alleged offender into custody or to take other measures to secure the presence of the person (*Article 6*). A Party in whose territory an alleged offender is found is under a duty, if it does not extradite to submit the case to its competent authorities for the purpose of prosecution (*Article 7*). The Convention also deals with extradition (*Article 8*).

4. The Convention applies to civil aircraft only, not to aircraft used in military, customs or police services (*Article 4(1)*). This provision is identical to *Article 1(4)* of the Tokyo Convention³⁹ and *Article 3(2)* of the Hague Convention.

5. The acts (except those concerning air navigation facilities in *Article 1(1)(d)*) set out in *Article 1* are only offences under the Convention in the following circumstances:

³⁹ For more details see page 12, para 3, above.

- *The place of take-off or landing, actual or intended, of the aircraft is situated outside the territory of the Party of registration of the aircraft, or the offence is committed in the territory of a Party other than the Party of registration of the aircraft (Article 4(2)).* This provision is slightly wider than the comparable provision in Article 3(3) of the Hague Convention, in that it applies if either the actual or intended place of landing is situated outside the territory of the Party of registration. It also extends the application of the Convention to conduct in relation to an aircraft passing through the airspace of another Party while travelling between two points in the territory of the Party of registration (e.g. French-registered aircraft flying from France across India to New Caledonia). If these requirements are satisfied it is, however, immaterial whether the aircraft was engaged on an international or a domestic flight.
- *If the offender or alleged offender⁴⁰ is found in the territory of a Party other than the Party of registration of the aircraft (Article 4(3)).* This is the case even if the places of take-off and landing, actual or intended, are situated in the territory of the Party of registration of the aircraft and the offence is committed in that territory.

6. In the case of the offence created by Article 1 (l)(d) (destroying or damaging air navigation facilities) the Convention applies only if the air navigation facilities are used in international air navigation (Article 4(5)).

7. Special provision is made for joint air transport operating organisations or international operating agencies that operate aircraft which are subject to joint or international registration (see paragraph 25 below). With respect to Parties that establish such organisations or agencies, the Convention does not apply if the places of take-off and landing, actual or intended, are situated within the territory of the same Party if it established the organisation or agency. However the Convention will apply even in those cases if the offence is committed, or if the offender or alleged offender is subsequently found, in the territory of a Party other than that Party (Article 4(4)).

The offences

8. Article 1(1) provides that:

- ‘1. Any person shall be guilty of 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

⁴⁰ This, and some of the other conventions, sometimes refer both to an ‘alleged offender’ and an ‘offender’. The reason is unclear, though it may be to cover a convicted person who has escaped.

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.'

9. In each case the conduct must be *unlawful* and carried out *intentionally*. The former requirement excludes from the scope of the offence conduct which is legally justifiable or done with legal authority, such as preventive action by police. The requirement that the act should be intentional applies only to the acts performed, not to their consequences; it is immaterial whether the consequences were those intended. Furthermore, save in the case of the offences established under *Article 1(1) (b) and (e)*, it is not necessary that the consequences should actually occur; it is sufficient that they are likely. It is unclear which system of law should govern such questions. However, it seems that such conduct would fall outside the scope of the offence if it is justifiable under the law of the Party of registration of the aircraft. Under *Article 3* each Party undertakes to make the offences punishable by severe penalties.

10. An aircraft is *in flight* for the purposes of the Convention 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; and in the case of a forced landing, the flight is deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board (*Article 2(a)*). This definition is identical to that employed in the Hague Convention and conforms to the wider of the two definitions employed in *Article 5(1)* of the Tokyo Convention.⁴¹

11. An aircraft is *in service* for the purposes of the Convention from the beginning of the pre-flight preparation of the aircraft by ground personnel, or the crew, for a specific flight until twenty-four hours after any landing; and the period during which an aircraft is in service includes the entire period during which it is in flight (*Article 2(b)*).

We will now consider each of the offences in turn.

(a) an act of violence against a person on board an aircraft in flight which is likely to endanger the safety of the aircraft.

12. The act of violence must be likely to endanger the safety of the aircraft. It must be directed against a person on board an aircraft in flight but, in contrast to the Hague Convention, the attacker does *not* have to be on board the aircraft. Nor does the attack have to be against a particular person. Thus the provision would extend to the application of violence against persons on board an aircraft in flight from outside the aircraft, such as firing a missile at it or planting a bomb on board before the flight.

⁴¹ See p. 15, para. 13 above.

(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.

13. The destruction or damage must occur at a time when the aircraft is in service; the offence does not extend to acts of sabotage against an aircraft performed before then. Yet it is of course possible that a person might before an aircraft is in service set in train a course of events which results in destruction or damage when the aircraft is in service. This deficiency is now remedied by the Montreal Protocol, Article 2, which is considered in detail later.⁴²

14. The offence is not limited to the conduct of persons on board the aircraft. It includes acts of sabotage to the aircraft before the flight commences, and an attack on an aircraft in flight from another aircraft. In the case of the infliction of damage which falls short of destruction, the damage must either render the aircraft incapable of flight or be likely to endanger its safety in flight. In the latter case it is not necessary that its safety in flight should in fact be endangered.

(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.

15. This is primarily intended to cover cases where a bomb is placed on board. The words "device or substance" are probably sufficiently wide to include most bombs. The offence may be committed by introducing the bomb into the aircraft or by attaching it to the outside. However, the provision requires that the bomb be placed or caused to be placed on an aircraft 'in service'. This does not mean that it has to be in service when the act is committed; it is enough that the act is done before the period of service commences and the bomb remains there during any period of service.

(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.

16. The air navigation facilities must be used for international air navigation (Article 4(5)). They may be on the ground, at an airport or elsewhere, and, possibly, on board an aircraft. It is not necessary that the safety of a particular aircraft in flight should in fact be endangered; it is sufficient that that the act creates a general danger to the safety of aircraft in flight. The provision is sufficiently wide to include the jamming of radio signals emitted from air navigation facilities.

(e) communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight.

17. This is intended to cover such cases as false signals being relayed to an aircraft with the purpose of diverting it from its intended course. However, such conduct will constitute an offence only if the safety of the aircraft is actually endangered.

⁴² At p. 104, para. 11, below.

Ancillary offences

18. Any person who attempts to commit any of the offences also commits an offence (*Article 1(2)(a)*). An accomplice of a person who commits, or attempts to commit, an offence under the Convention himself commits an offence (*Article 1(2)(b)*). In the Hague Convention the conduct of the accomplice must take place on board the aircraft if it is to constitute an offence, but there is no such restriction in the Montreal Convention.

Establishment of jurisdiction

19. The jurisdictional provisions of the Convention are very similar to those of *Article 4* of the Hague Convention. Each Party is required to 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 Party (*Article 5(1)(a)*);
- (b) When the offence is committed against or on board an aircraft registered with that Party (*Article 5(1)(b)*);
- (c) When the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board (*Article 5(1)(c)*);
- (d) When the offence is committed against or on board an aircraft leased without crew to a lessee who has his or her principal place of business or, if the lessee has no such place of business, his or her permanent residence, in the territory of that Party (*Article 5(1)(d)*).

19. Furthermore, *Article 5(2)* imposes a duty on each Party to establish its jurisdiction over the offences mentioned in *Article 1(1)(a), (b) and (c)* when the alleged offender is present in its territory and it does not extradite to any of the Parties mentioned in *Article 5(1)*, that is to say:

- the Party in whose territory the offence was committed;
- the Party of registration of the aircraft;
- the Party in whose territory the aircraft on board which the offence was committed landed with the alleged offender still on board; or
- the Party in whose territory a person, to whom the aircraft on which the offence was committed was leased without crew, has his or her principal place of business or, if none, where he or she has permanent residence.

This provision corresponds closely to *Article 4(2)* of the Hague Convention which has been considered in detail above.⁴³ However, the offences to which *Article 5(2)* relates do not include the offences covered by *Article 1(1)(d)* (destruction of or damage to air navigation facilities or interference with their operation) or *Article 1(1)(e)* (communication of information known to be false).

20. The draft Convention proposed that the Party in which the *effects* of the offences were felt should also be required to establish its jurisdiction. This was not accepted.⁴⁴

⁴³ See pp.52/3, paras. 23-27.

⁴⁴ See also, p 3, para. 7 above

21. The Convention provides that its jurisdictional provisions do not exclude any criminal jurisdiction exercised in accordance with national law (*Article 5(3)*). This provision corresponds to *Article 4(3)* of the Hague Convention. As with that Convention, the Montreal Convention makes no provision for priority of competing jurisdictions.

Aut dedere aut judicare

22. *Article 7* provides that a Party in whose territory the alleged offender is found shall, if it does not extradite, 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. This is identical to *Article 7* of the Hague Convention.⁴⁵

Lockerbie

23. Libya, the United Kingdom and the United States were, and still are, Parties to the Montreal Convention when flight PA 103 was sabotaged and exploded over Lockerbie in Scotland on 21 December 1988. But the UK and the US declined to invoke the provisions of the Convention. The results of the exhaustive police investigation implicated the Libyan Government, the two Libyans accused of the crime being charged on the basis that they had acted on behalf of the Libyan Intelligence Services. This was later confirmed in the judgment of the trial and appeal court in respect of the accused who was convicted. Given the alleged complicity of the Libyan Government - which if confirmed amounted to a fundamental breach of the Convention - it was out of the question that the accused should be tried by the Libyan courts. Yet, since Libyan law prohibited extradition of Libyans, if an extradition request had been made Libya would have been obliged to submit the case to its prosecuting authorities. The demand for the 'surrender' of the two accused for trial in a Scottish or US court could therefore be said to have been made in reliance on the saving provision in *Article 5(3)*. In the event, the accused were tried by a Scottish court sitting at Zeist in the Netherlands.⁴⁶

Extradition

24. The extradition provisions in *Article 8* are identical to those in *Article 8* of the Hague Convention.⁴⁷

Miscellaneous

25. Parties which establish joint air transport operating organisations, or international operating agencies, and which operate aircraft which are subject to joint or international registration are required to designate which Party shall have the attributes of the Party of registration for the purpose of the Convention (*Article 9*). Notice of this designation must be given to ICAO which is required to communicate it to the other Parties. This provision corresponds to *Article 18* of the Tokyo Convention⁴⁸ and *Article 5* of the Hague Convention.

⁴⁵ And see p. 8, para. 22 above for more details.

⁴⁶ For the history of how the accused came to be so tried, see A. Aust, 'Lockerbie: the other case' ICLQ (2000), pp. 278 *et seq.*

⁴⁷ See p. 8-10, paras. 24-30 above for more details.

⁴⁸ See p. 14, para. 11, above.

26. The Parties are required, in accordance with international and domestic law, to endeavour to take all practicable measures for the purpose of preventing the offences (*Article 10(1)*). The duties of Parties in relation to helping with the onward journey of passengers and crew, and the return of aircraft and cargo to those persons lawfully entitled to possession, are identical to those in *Article 9(2)* of the Hague Convention (*Article 10(2)*).

27. The duties of Parties in the matter of the custody of alleged offenders, preliminary inquiries, and communication with other Parties (*Article 6*), are very similar to those under the Hague Convention.

28. *Article 11*, which governs mutual assistance in criminal proceedings is very similar to *Article 10* of the Hague Convention.

29. Parties which have reason to believe that an offence will be committed are required to furnish any relevant material in their possession to those Parties which it believes are required by *Article 12* to establish their jurisdiction over the intended offence in accordance with *Article 5(1)*.

30. The duties of Parties in *Article 13* on the matter of reporting to ICAO correspond exactly to those in *Article 11* of the Hague Convention.

Disputes

31. *Article 14* contains the usual provision for the settlement of disputes between two or more Parties concerning the interpretation or application of the Convention.⁴⁹

Reservations

32. In addition to the right of a Party under *Article 14* to make a reservation regarding that article, reservations may also be made to other articles, provided the reservations are compatible with the object and purpose of the Convention.⁵⁰ Venezuela made one regarding asylum which was objected to by the United Kingdom.⁵¹

Accession

33. The Convention is open to accession by any State which did not sign it before it came into force on 26 January 1973 (*Article 15(1)*). The instrument of accession must be deposited with the Depositary Governments, namely the Governments of the Russian Federation, the United Kingdom and the United States (*Article 13(2)*), though it is sufficient to deposit with only one of them. A Party may denounce the Convention (*Article 16*).

Succession

34. Alternatively, a State that has gained its independence may be able to become a Party by succession.⁵²

⁴⁹ See p. 10, para. 33 above for details.

⁵⁰ See p. 11, para. 34 for details.

⁵¹ See the notes to the status list at www.icao.int

⁵² See p. 11, para. 35 above

Implementation

35. Legislation will normally be needed to give effect to the Convention in domestic law. Model legislative provisions are at page 97 below. However careful consideration will have to be given by each State that is considering becoming a Party to the Convention as to its precise needs for the content of the legislation.

Montreal 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 sub-paragraph (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, 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 Organization 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, anyone 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⁽⁴⁾.

**CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS
AGAINST THE SAFETY OF CIVIL AVIATION**
Signed at Montreal On 23 September 1971

Entry into force: The Convention entered into force on 26 January 1973.

Status: 176 Parties.

State	Date of signature	Date of deposit of Instrument of Ratification, Accession or Succession
Afghanistan		26 September 1984
Albania		21 October 1997
Algeria		6 October 1995
Angola		12 March 1998
Antigua and Barbuda		22 July 1985
Argentina	23 September 1971	26 November 1973
Australia	12 October 1972	12 July 1973
Austria	13 November 1972	11 February 1974
Azerbaijan		15 March 2000
Bahamas		27 December 1984
Bahrain		20 February 1984
Bangladesh		28 June 1978
Barbados	23 September 1971	6 August 1976
Belarus	23 September 1971	31 January 1973
Belgium	23 September 1971	13 August 1976
Belize		10 June 1998
Bhutan		28 December 1988
Bolivia		18 July 1979
Bosnia and Herzegovina		15 August 1994
Botswana	12 October 1972	28 December 1978
Brazil	23 September 1971	24 July 1972
Brunei Darussalam		16 April 1986
Bulgaria	23 September 1971	28 March 1973
Burkina Faso		19 October 1987
Burundi	6 March 1972	11 February 1999
Cambodia		8 November 1996

Cameroon		11 July 1973
Canada	23 September 1971	19 June 1972
Cape Verde		20 October 1977
Central African Republic		1 July 1991
Chad	23 September 1971	12 July 1972
Chile		28 February 1974
China		10 September 1980
Colombia		4 December 1974
Comoros		1 August 1991
Congo	23 September 1971	19 March 1987
Costa Rica	23 September 1971	21 September 1973
Côte d'Ivoire		9 January 1973
Croatia		8 June 1993
Cuba		31 October 2001
Cyprus	28 November 1972	27 July 1973
Czech Republic		14 November 1994
Democratic People's Republic of Korea		13 August 1980
Democratic Republic of the Congo		6 July 1977
Denmark	17 October 1972	17 January 1973
Djibouti		24 November 1992
Dominican Republic	31 May 1972	28 November 1973
Ecuador		12 January 1977
Egypt	24 November 1972	20 May 1975
El Salvador		25 September 1979
Equatorial Guinea		2 January 1991
Estonia		22 December 1993
Ethiopia	23 September 1971	26 March 1979
Fiji	21 August 1972	5 March 1973
Finland		13 July 1973
France		30 June 1976
Gabon	24 November 1971	29 June 1976

Gambia		28 November 1978
Georgia		20 April 1994
Germany	23 September 1971	3 February 1978
Ghana		12 December 1973
Greece	9 February 1972	15 January 1974
Grenada		10 August 1978
Guatemala	9 May 1972	19 October 1978
Guinea		2 May 1984
Guinea-Bissau		20 August 1976
Guyana		21 December 1972
Haiti	6 January 1972	9 May 1984
Honduras		13 April 1987
Hungary	23 September 1971	27 December 1972
Iceland		29 June 1973
India	11 December 1972	12 November 1982
Indonesia		27 August 1976
Iran, Islamic Republic of		10 July 1973
Iraq		10 September 1974
Ireland		12 October 1976
Israel	23 September 1971	30 June 1972
Italy	23 September 1971	19 February 1974
Jamaica	23 September 1971	15 September 1983
Japan		12 June 1974
Jordan	2 May 1972	13 February 1973
Kazakhstan		4 April 1995
Kenya		11 January 1977
Kuwait		23 November 1979
Kyrgyzstan		25 February 2000
Lao People's Democratic Republic	1 November 1972	6 April 1989
Latvia		13 April 1997
Lebanon		23 December 1977
Lesotho		27 July 1978
Liberia		1 February 1982
Libyan Arab Jamahiriya		19 February 1974

Liechtenstein		23 February 2001
Lithuania		4 December 1996
Luxembourg	29 November 1971	18 May 1982
Madagascar		18 November 1986
Malawi		21 December 1972
Malaysia		4 May 1985
Maldives		1 September 1987
Mali		24 August 1972
Malta		14 June 1991
Marshall Islands		31 May 1989
Mauritania		1 November 1978
Mauritius		25 April 1983
Mexico	25 January 1973	12 September 1974
Monaco		3 June 1983
Mongolia	18 February 1972	14 September 1972
Morocco		24 October 1975
Myanmar		22 May 1996
Nauru		17 May 1984
Nepal		11 January 1979
Netherlands	23 September 1971	27 August 1973
New Zealand	26 September 1972	12 February 1974
Nicaragua	22 December 1972	6 November 1973
Niger	6 March 1972	1 September 1972
Nigeria		3 July 1973
Norway		1 August 1973
Oman		2 February 1977
Pakistan		24 January 1974
Palau		3 August 1995
Panama	18 January 1972	24 April 1972
Papua New Guinea		15 December 1975
Paraguay	23 January 1973	5 March 1974
Peru		28 April 1978
Philippines	23 September 1971	26 March 1973
Poland	23 September	28 January 1975

		1971
Portugal	23 September 1971	15 January 1973
Qatar		26 August 1981
Republic of Korea		2 August 1973
Republic of Moldova		21 May 1997
Romania	10 July 1972	15 August 1975
Russian Federation	23 September 1971	19 February 1973
Rwanda	26 June 1972	3 November 1987
Saint Lucia		8 November 1983
Saint Vincent and the Grenadines		29 November 1991
Samoa		9 July 1998
Saudi Arabia		14 June 1974
Senegal	23 September 1971	3 February 1978
Seychelles		29 December 1978
Sierra Leone		20 September 1979
Singapore	21 November 1972	12 April 1978
Slovakia		6 March 1995
Slovenia		27 May 1992
Solomon Islands		13 April 1982
South Africa	23 September 1971	30 May 1972
Spain	15 February 1972	30 October 1972
Sri Lanka		30 May 1978
Sudan		18 January 1979
Suriname		27 October 1978
Swaziland		27 December 1999
Sweden		10 July 1973
Switzerland	23 September 1971	17 January 1978
Syrian Arab Republic		10 July 1980
Tajikistan		29 February 1996
Thailand		16 May 1978
The former Yugoslav Republic of Macedonia		4 January 1995
Togo		9 February 1979
Tonga		21 February 1977

Trinidad and Tobago	9 February 1972	9 February 1972
Tunisia		16 November 1981
Turkey	5 July 1972	23 December 1975
Turkmenistan		25 May 1999
Uganda		19 July 1982
Ukraine	23 September 1971	26 January 1973
United Arab Emirates		10 April 1981
United Kingdom	23 September 1971	25 October 1973
United Republic of Tanzania		9 August 1983
United States	23 September 1971	1 November 1972
Uruguay		12 January 1977
Uzbekistan		7 February 1994
Vanuatu		6 November 1989
Venezuela	23 September 1971	21 November 1983
Vietnam		17 September 1979
Yemen	23 October 1972	29 September 1986
Yugoslavia, F.R. of		23 July 2001
Zambia		3 March 1987
Zimbabwe		6 February 1989

Model Legislative Provisions

To implement the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23rd September, 1971, and for purposes connected therewith.

NOTE

No specific penalties for the offences have been included because of the variation in sentencing practice between states. However the Convention requires penalties that reflect the seriousness of the offence and therefore maximum penalties should be set including, if appropriate, a life sentence.

Be it enacted as follows:

Short title and commencement

1. This Act may be cited as the Protection of Aircraft Act, and shall come into operation on (....)¹.

Interpretation

2. (1) In this Act, unless the context otherwise requires - "act of violence" means
 - - (a) any act done in (....)² which constitutes the offence of (....)³; and
 - (b) any act done outside (....)² which if done in (....)², would constitute such an offence as is mentioned in paragraph (a);

"the Convention" means the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23rd September, 1971;

"landing" includes alighting on water;

"military service" includes naval and air force service;

"unlawfully" -

- (a) in relation to the commission of an act in (....)², means an offence that is (apart from this Act) constituted under any law in force in (....)², and
- (b) in relation to the commission of an act outside (....)², means the commission of the act that would (apart from this Act) have been an offence under any law in force in (....)² had it been committed in (....)⁴.

(2) For the purposes of this Act -

- (a) the period during which an aircraft is in flight shall be deemed to include any period from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation, and, in the case of a forced landing, any period until the competent authorities take over responsibility for the aircraft and for persons and property on board; and
- (b) an aircraft shall be taken to be in service during the whole of the period which begins with the pre-flight preparation of the aircraft for a flight and ends twenty-four hours after the aircraft lands having completed that flight, and also at any time (not falling within that period) while, in accordance with paragraph (a) the aircraft is in flight.

Destroying, damaging or endangering safety of aircraft

3. (1) Subject to subsection (4), any person who unlawfully and intentionally-

- (a) destroys an aircraft in service or so damages such aircraft as to render it incapable of flight or as to be likely to endanger its safety in flight; or
- (b) commits on board an aircraft in flight any act of violence which is likely to endanger the safety of the aircraft,

shall be guilty of an offence under this Act.

(2) Subject to subsection (4), any person who unlawfully and intentionally places or causes to be placed on an aircraft in service any device or substance which is likely to destroy the aircraft or is likely so to damage it as to render it incapable of flight or as to be likely to endanger its safety in flight shall be guilty of an offence under this Act; but nothing in this subsection shall be construed as limiting the circumstances in which the commission of any act -

- (a) may constitute an offence under subsection (1); or
- (b) may constitute attempting or conspiring to commit or abetting the commission of such offence.

(3) Except as provided by subsection (4), subsections (1) and (2) apply whether any such act therein mentioned is committed in (....)² or elsewhere, whatever the nationality or citizenship of the person committing the act or whatever the State in which the aircraft is registered.

(4) Subsections (1) and (2) do not apply to any act committed in relation to an aircraft used in military, customs or police service unless -

- (a) the act is committed in or over (....)²; or

- (b) where the act is committed outside (.....)², the person committing the act is a citizen of (.....)²⁵.

Other acts endangering or likely to danger the safety of aircraft

- 4. (1) Subject to subsections (5) and (6), any person who unlawfully and intentionally destroys or damages any property to which this section applies or interferes with the operation of such property, where the destruction, damage or interference is likely to endanger the safety of aircraft in flight, shall be guilty of an offence under this Act.
- (2) Subsection (1) applies to any property used for the provision of air navigation facilities including any land, building or ship so used, and including any apparatus or equipment so used, whether it is on board an aircraft or elsewhere.
- (3) Subject to subsections (4) and (5), any person who intentionally communicates any information which is false, misleading or deceptive in a material particular, where the communication of the information endangers the safety of an aircraft in flight or is likely to endanger the safety of an aircraft in flight, shall be guilty of an offence under this Act.
- (4) It shall be a defence for a person charged with an offence under subsection (3) to prove -
 - (a) that he or she believed and had reasonable grounds for believing, that the information was true; or
 - (b) that, when he or she communicated the information, they were lawfully employed to perform duties which consisted of or included the communication of information and that he or she communicated the information in good faith in the performance of those duties.
- (5) Subsections (1) and (3) do not apply to the commission of any act unless either the act is committed in (.....)², or, where the act is committed outside (.....)² -
 - (a) the person committing the act is a citizen of (.....)²; or
 - (b) the commission of the act endangers or is likely to endanger the safety in flight of a civil aircraft registered in (.....)² or chartered by demise to a lessee whose principal place of business, or (if none) whose permanent residence is in (.....)²; or
 - (c) the act is committed on board a civil aircraft which is registered or so chartered; or
 - (d) the act is committed on board a civil aircraft which lands in (.....)² with the person who committed the act still on board.

- (6) Subsection (1) also does not apply to any act committed outside (....)² and so committed in relation to property which is situated outside (....)² and is not used for the provision of air navigation facilities in connection with international air navigation, unless the person committing the act is a citizen of (....)².
- (7) In this section, "civil aircraft" means any aircraft other than an aircraft used in military, customs or police service.

Abetting the commission of acts outside (....)²

- 5. Any person in (....)² who abets the commission elsewhere of any act which -
 - (a) would, but for subsection (4) of section 3, be an offence under that section; or
 - (b) would, but for subsection (5) or (6) of section 4, be an offence under that section,

shall be guilty of an offence under this Act.

Penalty

- 6. Any person guilty of an offence under this Act shall be liable on conviction to be punished with (....)⁵.

Consent for prosecution

- 7. No prosecution shall be instituted under this Act without the written consent of (....)⁶.

Extradition

- 8. (1) There shall be deemed to be included in [the list of] extradition crimes [described in the (....)⁷] offences under this Act and attempts to commit such offences.
- (2) Where no extradition treaty is in force between (....)² and a State which is party to the Convention, a notification (....)⁸ may be made applying the (....)⁸ as if the Convention were an extradition treaty between (....)² and that State; but where the (....)⁷ is so applied, it shall have effect as if the only extradition crimes within the meaning of that Act were offences under this Act and attempts to commit such offences.
- (3) For the purposes of the (....)⁷ any act, wherever committed, which -
 - (a) is an offence under this Act or an attempt to commit such an offence, or attempt but for subsection (4) of section 3, or subsection (5) or (6) of section 4; and
 - (b) is an offence against the law of any State in the case of which the (....)⁷ has been applied by (....)⁹,

shall be deemed to be an offence within the jurisdiction of that State.

NOTES

1. Date of commencement or procedure by which the Statute is to be brought into force.
2. Name of country.
3. List relevant offences in law of acceding State.
4. The Montreal Convention is intended to apply only to civil aircraft and provides that it shall not apply to aircraft used in military, customs or police services. (Article 4(1)). This provision is, therefore, not required in order to ensure compliance with the Montreal Convention. However, similar provisions have been included in enacting legislation in a number of Commonwealth States.
5. Maximum penalty.
6. The Attorney General or other responsible Law Officer. The purpose of this provision is to prevent prosecutions for infringements of this Statute without the consent of the Government.
7. Extradition Act or other relevant Statute or law.
8. Specify how notification is to be made e.g. by publication in official government publication.
9. Specify manner of application e.g. by publication in official government publication.

CHAPTER FIVE

PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS OF VIOLENCE AT AIRPORTS SERVING INTERNATIONAL CIVIL AVIATION 1988 ('Montreal Protocol')

1. The Tokyo, Hague and Montreal Conventions are concerned with the safety of civil aviation, in particular the safety of aircraft in flight. However, a further and disturbing manifestation of modern terrorism has been the use of violence at international civil airports. The terrorist attack at Rome Airport in January 1986 was a notorious example. Growing concern at the threat to airports led to the convening of an international conference at Montreal which, on 24 February 1988, adopted the Montreal Protocol ('the Protocol'). It entered into force on 6 August 1989. As of September 2002 it had 123 Parties, including 33 Commonwealth States. Four more Commonwealth States have signed the Protocol, but not yet ratified it. The text of the Protocol is at page 107 below, and the complete list of signatures, ratifications, accessions, territorial extensions and successions as of September 2002 is at page 110 below.

Object and scope of the Protocol

2. The Protocol supplements the Montreal Convention ('the Convention') by extending the scheme of the Convention to include offences involving acts of violence at international airports. As between Parties to the Protocol, the Convention and the Protocol are to be read and interpreted as one single instrument (*Article 1*).⁵³ A State that is not a Party to the Convention may ratify or accede to the Protocol only if at the same time it ratifies or accedes to the Convention (*Articles 5(2)and 7(2)*). Between those Parties to the Convention which are not Parties to the Protocol, the Convention will continue to apply in its original, unamended form; as it will also as between a Party to the Protocol (and therefore also to the Convention) and a Party to the Convention alone.

3. The Protocol makes use of the scheme and methods of the Convention. In particular, *Article 2* extends the scope of the offences in *Article 1* of the Convention ('the Convention offences') by adding some new offences ('the Protocol offences'), and *Article 3* provides for the establishment of jurisdiction over the Protocol offences.

4. Reference has been made in Chapter 4 to the complex rules governing the scope and application of the Convention.⁵⁴ For the Protocol offences, the situation is more straightforward: the majority of the provisions of the Convention apply to the Protocol offences. This follows from the fact that, as between Parties to the Protocol, the Convention and the Protocol must be read and interpreted as one single instrument. Accordingly, references in the Convention to 'offence' and 'alleged offender' must, as between Parties to the Protocol, be read as referring, in addition, to the Protocol offences and those alleged to have committed them.

The Protocol offences

5. *Article 2* adds a new paragraph 1 *bis* to *Article 1* of the Convention:

⁵³ The Protocol uses Roman numerals, perhaps to make it easier to distinguish the articles of the Protocol from those of the Convention. For simplicity, Arabic numbers are used here.

⁵⁴ See p. 75-76, paras. 3-7 above.

'1 bis. Any person commits an offence if he unlawfully and intentionally, using any device, substance or weapon:

- (a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or
- (b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport,

if such an act endangers or is likely to endanger safety at that airport.'

(It also makes a consequential amendment to *Article 1(2)(a)* of the Convention, namely, the insertion, after 'paragraph 1' of the words 'or paragraph 1 *bis*'.)

The two offences created by *Article 2(1) bis* will be considered in turn.

A person commits an offence if he, unlawfully and intentionally, using any device, substance or weapon, performs an act of violence against a person at an airport serving international civil aviation which causes, or is likely to cause, serious injury or death, if such an act endangers or is likely to endanger safety at that airport.

6. The requirement that the act should be both intentional and unlawful might give rise to the question which law governs the legality of the conduct. We have seen that difficulties may arise in determining the unlawful character of activities within *Article 1* of the Convention because of the possibility that such activities may occur in circumstances where different Parties have competing claims to regulate conduct. But, no such difficulty is likely to arise in the case of Protocol offences since the acts will take place at an airport, and the legality of such conduct will fall to be determined by the law of the Party in whose territory the airport is situated.

7. The offence involves the use of 'any device, substance or weapon'. These words are extremely wide. However, the offence will not be committed if the act of violence is committed by an unarmed person.

8. The act of violence must be against a person and must cause, or be such as is likely to cause, serious injury or death. There is no requirement of an intention to kill or to cause serious injury; it is sufficient that the attacker intentionally performs an act of violence which causes or is likely to cause serious injury or death.

9. The act must take place at an airport serving international civil aviation. 'Airport' is not defined, but is wide enough to include airport buildings and elsewhere within the airport, including runways.

10. The act is distinguished from 'ordinary' acts of violence by the requirement that it must endanger life or be likely to endanger safety at the airport.

A person commits an offence if he, unlawfully and intentionally, using any device, substance or weapon, destroys or seriously damages the facilities of an airport serving international civil aviation, or aircraft not in service located thereon, or

disrupts the services of the airport, if such an act endangers or is likely to endanger safety at that airport.

11. The act must involve the use of a device, substance or weapon to destroy or inflict serious damage on the airport facilities, or aircraft not in service, or to disrupt the services of the airport. It should be noted that while the offences created by Convention Article 1(l)(a), (d) and (e) relate to aircraft in flight, and the offences created by Convention Article 1(l)(b) and (c) relate to aircraft in service, the Protocol offence applies to activities in relation to aircraft not in service when located at an airport serving international civil aviation. This remedies the deficiency in the Convention referred to in Chapter 4.⁵⁵

12. The act must take place at an airport serving international civil aviation.

13. Again, the act is distinguished from ‘ordinary’ acts of violence by the requirement that it must endanger life or be likely to endanger safety at the airport.

14. By virtue of *Article 1(2)(a)* of the Convention, as amended by *Article 2(2) of the Protocol*, a person also commits an offence if he attempts to commit one of the Protocol offences, or if he is the accomplice of a person who commits or attempts to commit one of the Protocol offences.

Jurisdiction

15. *Article 5* of the Convention requires Parties to take such measures as may be necessary to establish their jurisdiction over Convention offences in specified circumstances. *Article 3 of the Protocol* adds a new paragraph to *Article 5* of the Convention (paragraph *2bis*) relating solely to Protocol offences. The effect of *Article 5* in relation to the Convention offences has been considered in detail in Chapter 4.⁵⁶ The effect of *Article 5* of the Convention, as amended in relation to the Protocol offences, is as follows:

- Prima facie, the terms of *Article 5(1)* of the Convention (and in particular the reference to ‘the offences’) are wide enough to include both Convention offences and Protocol offences. However, when one considers the circumstances in which Parties are required by *Article 5(1)* of the Convention to establish their jurisdiction, they are not all appropriate to Protocol offences. *Article 5(1)(a)* of the Convention (which requires a Party to establish its jurisdiction when the offence is committed in the territory of that Party) poses no difficulty. But this is not the case for *Article 5(1)(b), (c) or (d)* of the Convention because the linking factors there employed include references to the aircraft on board which (*Article 5(1)(b), (c), (d)*), or against which (*Article 5(1)(b), (d)*), the offence is committed. The Protocol offences are aimed primarily at safeguarding international airports and, while it is possible that they may take place on board or against aircraft (e.g. where aircraft not in service are located at an international civil airport), this will be incidental. It therefore appears that a Party to the Protocol is required to establish its jurisdiction over the Protocol offences when committed in the territory of that

⁵⁵ See p. 78, para. 13 above.

⁵⁶ See p. 79, paras. 19-21 above.

Party and, probably, also when Protocol offences are committed on board or against aircraft in the circumstances described in *Article 5(1)(b), (c) or (d)* of the Convention.

- *Article 5(2)* of the Convention has no application to Protocol offences because it is limited by its terms to the offences created by *Article 1(1)(a), (b) and (c)*, and *Article 1(2)*, of the Convention.
- New *Article 5(2)*bis** applies only to Protocol offences, and corresponds generally to *Article 5(2)* of the Convention. It requires each Party to take such measures as may be necessary to establish its jurisdiction over Protocol offences where the alleged offender is present in its territory and it does not extradite him pursuant to *Article 8* of the Convention. Whereas the obligation under *Article 5(2)* of the Convention applies only where there has been no extradition to one of the Parties mentioned in *Article 5(1)* of the Convention, the obligation under *Article 5(2)*bis** applies only where there has been no extradition to the Party mentioned in *Article 5(1)(a)* of the Convention. This conforms to the analysis of the applicability of *Article 5(1)* of the Convention suggested above.

Duties of the Parties

16. The duties of Parties under the Convention in relation to the custody of alleged offenders, preliminary enquiries and communication of information (*Articles 6 and 12*); submitting the case to the competent authorities for the purpose of prosecution, if the alleged offender is not extradited (*Article 7*); the prevention of offences (*Article 10*); mutual assistance in criminal proceedings (*Article 11*); and reporting to ICAO (*Article 13*), apply equally, as between Parties to the Protocol, to Protocol offences. To the extent that the commission of a Protocol offence may have delayed or interrupted a flight, *Article 10* of the Convention would require a Party to the Protocol in whose territory the aircraft or passengers or crew are present to help them continue their journey as soon as possible, and to return, without delay, the aircraft and its cargo to the persons lawfully entitled to possession. *Article 9* of the Convention (joint air transport operating organisations or international operating agencies) does not appear to be of direct relevance to Protocol offences.

Extradition

17. As between Parties to the Protocol, the extradition provisions of the Convention (*Article 8*) apply to Protocol offences.

Disputes

18. As between Parties to the Protocol, *Article 14* of the Convention governing settlement of disputes applies also.

Final clauses

19. Although the Protocol is supplementary to the Convention, since it is a treaty in its own right, it has its very own set of final clauses. As with the Convention, the Protocol has no prohibition on reservations. The Protocol is open to accession by any State which did not sign it before it came into force on 6 August 1989 (*Article 7(1)*). The instrument of accession must be deposited with the Governments of the Russian Federation, the United Kingdom and the United States or with ICAO (*Articles 5(3)*

and 7(3)). Today, ICAO would be the natural depositary. Alternatively, a State that has gained its independence may be able to become a Party by succession.⁵⁷ A Party may denounce the Convention (*Article 8*).

Implementation

20. Legislation will normally be needed to give effect to the Protocol in domestic law. Model Legislative Provisions are at page 116 below. However careful consideration will have to be given by each State that is considering becoming a Party to the Protocol as to its precise needs for the content of the legislation. If the State is not already a Party to the Convention (see paragraph 2 above), the legislation will have to implement the Convention as well.

⁵⁷ See p. 11, para. 35 above.

PROTOCOL

for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Done at Montreal on 23 September 1971

THE STATES PARTIES TO THIS PROTOCOL

CONSIDERING that unlawful acts of violence which endanger or are likely to endanger the safety of persons at airports serving international civil aviation or which jeopardize the safe operation of such airports undermine the confidence of the peoples of the world in safety at such airports and disturb the safe and orderly conduct of civil aviation for all States;

CONSIDERING that the occurrence of such acts is a matter of grave concern to the international community and that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders;

CONSIDERING that it is necessary to adopt provisions supplementary to those of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971, to deal with such unlawful acts of violence at airports serving international civil aviation;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

This Protocol supplements the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971 (hereinafter referred to as "the Convention"), and, as between the Parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument.

ARTICLE 2

1. In Article 1 of the Convention, the following shall be added as new paragraph 1 bis:

"1 bis. Any person commits an offence if he unlawfully and intentionally, using any device, substance or weapon:

- (a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or
- (b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport,

if such an act endangers or is likely to endanger safety at that airport".

2. In paragraph 2(a) of Article 1 of the Convention, the following words shall be inserted after the words "paragraph 1":

"or paragraph 1 bis"

ARTICLE 3

In Article 5 of the Convention, the following shall be added as paragraph 2 bis:

"2 bis. 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 bis, 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 the State mentioned in paragraph 1 (a) of this Article."

ARTICLE 4

This Protocol shall be open for signature at Montreal on 24 February 1988 by States participating in the International Conference on Air Law held at Montreal from 9 to 24 February 1988. After 1 March 1988, the Protocol shall be open for signature to all States in London, Moscow, Washington and Montreal, until it enters into force in accordance with Article VI.

ARTICLE 5

1. This Protocol shall be subject to ratification by the signatory States.

2. Any State which is not a Contracting State to the Convention may ratify this Protocol if at the same time it ratifies or accedes to the Convention in accordance with Article 15 therefor.

3. Instruments of ratification 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 or with the International Civil Aviation Organisation, which are hereby designated the Depositaries.

ARTICLE 6

1. As soon as ten of the signatory States have deposited their instruments of ratification of this Protocol, it shall enter into force between them on the thirtieth day after the date of the deposit of the tenth instrument of ratification. It shall enter into force for each State which deposits its instrument of ratification after that date on the thirtieth day after deposit of its instrument of ratification.

2. As soon as this Protocol enters into force, it shall be registered by the Depositaries 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 7

1. This Protocol shall, after it has entered into force, be open for accession by any non-signatory State.
2. Any State which is not a Contracting State to the Convention may accede to this Protocol if at the same time it ratifies or accedes to the Convention in accordance with Article 15 thereof.
3. Instruments of accession shall be deposited with the Depositaries and accession shall take effect on the thirtieth day after the deposit.

ARTICLE 8

1. Any Party to this Protocol may denounce it by written notification addressed to the Depositaries.
2. Denunciation shall take effect six months following the date on which notification is received by the Depositaries.
3. Denunciation of this Protocol shall not of itself have the effect of denunciation of the Convention.
4. Denunciation of the Convention by a Contracting State to the Convention as supplemented by this Protocol shall also have the effect of denunciation of this Protocol.

ARTICLE 9

1. The Depositaries shall promptly inform all signatory and acceding States to this Protocol and all signatory and acceding States to the Convention:
 - (a) of the date of each signature and the date of deposit of each instrument of ratification of, or accession to, this Protocol, and
 - (b) of the receipt of any notification of denunciation of this Protocol and the date thereof.
2. The Depositaries shall also notify the States referred to in paragraph 1 of the date on which this Protocol enters into force in accordance with Article VI.

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

DONE at Montreal on the twenty-fourth day of February of the year One Thousand Nine Hundred and Eighty-eight, in four originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish languages.

PROTOCOL

**FOR THE SUPPRESSION OF UNLAWFUL ACTS OF VIOLENCE
AT AIRPORTS SERVING INTERNATIONAL CIVIL AVIATION,
SUPPLEMENTARY TO THE CONVENTION FOR THE SUPPRESSION OF
UNLAWFUL ACTS
AGAINST THE SAFETY OF CIVIL AVIATION, DONE AT MONTREAL ON
23 SEPTEMBER 1971**
Signed At Montreal On 24 February 1988

Entry into force: The Protocol entered into force on 6 August 1989.

Status : 123 Parties.

State	Date of signature	Date of deposit of Instrument of Ratification, Accession or Succession	Effective date
Albania		29 April 2002	29 May 2002
Algeria		6 October 1995	5 November 1995
Argentina	24 February 1988	12 February 1992	13 March 1992
Australia		23 October 1990	22 November 1990
Austria	4 July 1989	28 December 1989	27 January 1990
Azerbaijan		23 March 2000	22 April 2000
Bahrain		12 February 1996	13 March 1996
Belarus	24 February 1988	1 May 1989	6 August 1989
Belgium	15 March 1989	20 April 1999	20 May 1999
Belize		10 June 1998	10 July 1998
Bolivia		1 February 2002	3 March 2002
Bosnia and Herzegovina		15 August 1994	6 March 1992
Botswana		30 October 2000	29 November 2000
Brazil	24 February 1988	9 May 1997	8 June 1997
Brunei Darussalam		20 December 2000	19 January 2001
Bulgaria	24 February 1988	26 March 1991	25 April 1991
Burkina Faso		8 December 1998	7 January 1999
Cambodia		8 November 1996	8 December 1996

Cameroon		23 November 1988	
Canada	24 February 1988	2 August 1993	1 September 1993
Cape Verde		12 September 2002	12 October 2002
Central African Republic		1 July 1991	31 July 1991
Chile	24 February 1988	15 August 1989	14 September 1989
China	24 February 1988	5 March 1999	4 April 1999
Congo	13 April 1989		
Costa Rica	24 February 1988		
Côte d'Ivoire	21 March 1988		
Croatia		8 June 1993	8 October 1991
Cuba		31 October 2001	30 November 2001
Cyprus		23 April 2002	23 May 2002
Czech Republic		25 March 1993	1 January 1993
Democratic People's Republic of Korea	11 April 1989	19 July 1995	18 August 1995
Democratic Republic of the Congo	24 February 1988		
Denmark	24 February 1988	23 November 1989	23 December 1989
Egypt	24 February 1988	25 July 2000	24 August 2000
El Salvador		8 April 1998	8 May 1998
Estonia		22 December 1993	21 January 1994
Ethiopia	24 February 1988	15 December 1999	14 January 2000
Fiji		21 September 1992	21 October 1992
Finland	16 November 1988	3 April 1998	3 May 1998
France	29 March 1988	6 September 1989	6 October 1989
Gabon	20 September 1988		
Gambia		16 June 2000	16 July 2000
Georgia		15 February 1999	17 March 1999
Germany	24 February	25 April 1994	25 May 1994

		1988	
Ghana	24 February 1988	15 July 1997	14 August 1997
Greece	18 April 1988	25 April 1991	25 May 1991
Grenada		15 January 2002	14 February 2002
Guatemala		11 October 1994	10 November 1994
Guinea		1 October 1998	31 October 1998
Guyana		19 June 2002	19 July 2002
Hungary	24 February 1988	7 September 1988	6 August 1989
Iceland	24 February 1988	9 May 1990	8 June 1990
India		22 March 1995	21 April 1995
Indonesia	24 February 1988		
Iran (Islamic Republic of)		14 February 2002	16 March 2002
Iraq		31 January 1990	2 March 1990
Ireland	29 July 1988	26 July 1991	25 August 1991
Israel	24 February 1988	2 April 1993	2 May 1993
Italy	24 February 1988	13 March 1990	12 April 1990
Jamaica	24 February 1988		
Japan		24 April 1998	24 May 1998
Jordan	30 September 1988	18 September 1992	18 October 1992
Kazakhstan		18 May 1995	17 June 1995
Kenya		5 October 1995	4 November 1995
Kuwait	24 February 1988	8 March 1989	6 August 1989
Kyrgyzstan		28 February 2000	29 March 2000
Latvia		13 April 1997	13 May 1997
Lebanon	24 February 1988	27 May 1996	26 June 1996
Liberia	24 February 1988		
Libyan Arab Jamahiriya		26 July 1996	25 August 1996
Liechtenstein		26 February 2001	28 March 2001
Lithuania		4 December 1996	3 January 1997

Luxembourg	18 May 1989		
Madagascar		30 March 1998	29 April 1998
Malawi	24 February 1988		
Malaysia	24 February 1988		
Maldives		22 March 1999	21 April 1999
Mali		31 October 1990	30 November 1990
Malta		14 June 1991	14 July 1991
Marshall Islands	23 June 1988	30 May 1989	6 August 1989
Mauritius	28 June 1989	17 August 1989	16 September 1989
Mexico	24 February 1988	11 October 1990	10 November 1990
Monaco		22 December 1993	21 January 1994
Mongolia		22 September 1999	22 October 1999
Morocco	8 July 1988	15 February 2002	17 March 2002
Myanmar		22 May 1996	21 June 1996
Netherlands	13 April 1988	11 July 1995	10 August 1995
New Zealand	11 April 1989	2 August 1999	1 September 1999
Nicaragua		25 April 2002	25 May 2002
Niger	24 February 1988		
Norway	24 February 1988	29 May 1990	28 June 1990
Oman		27 November 1992	27 December 1992
Pakistan	24 February 1988	26 September 2000	26 October 2000
Palau		12 October 1995	11 November 1995
Panama		10 April 1996	10 May 1996
Papua New Guinea		11 July 2002	10 August 2002
Paraguay		23 July 2002	22 August 2002
Peru	24 February 1988	7 June 1989	6 August 1989
Philippines	25 January 1989		
Poland	24 February 1988		

Portugal	24 February 1988	18 December 2001	17 January 2002
Republic of Korea	24 February 1988	27 June 1990	27 July 1990
Republic of Moldova		20 June 1997	20 July 1997
Romania	24 February 1988	3 September 1998	3 October 1998
Russian Federation	24 February 1988	31 March 1989	6 August 1989
Rwanda		16 May 2002	15 June 2002
Saint Lucia		11 June 1990	11 July 1990
Saint Vincent and the Grenadines	1 December 1988	29 November 1991	29 December 1991
Samoa		9 July 1998	8 August 1998
Saudi Arabia	24 February 1988	21 February 1989	6 August 1989
Senegal	24 February 1988		
Singapore		22 November 1996	22 December 1996
Slovakia		20 March 1995	1 January 1993
Slovenia		27 May 1992	-
South Africa		21 September 1998	21 October 1998
Spain	2 March 1989	8 May 1991	7 June 1991
Sri Lanka	28 October 1988	11 February 1997	13 March 1997
Sudan		15 May 2000	14 June 2000
Sweden	24 February 1988	26 July 1990	25 August 1990
Switzerland	24 February 1988	9 October 1990	8 November 1990
Syrian Arab Republic		18 July 2002	17 August 2002
Tajikistan		29 February 1996	30 March 1996
Thailand		14 May 1996	13 June 1996
The former Yugoslav Republic of Macedonia		4 January 1995	-
Togo	24 October 1988	9 February 1990	11 March 1990
Trinidad and Tobago		3 April 2001	3 May 2001
Tunisia		7 June 1994	7 July 1994
Turkey	24 February 1988	7 July 1989	6 August 1989
Turkmenistan		25 May 1999	24 June 1999

Uganda		17 March 1994	16 April 1994
Ukraine	24 February 1988	3 January 1990	2 February 1990
United Arab Emirates	24 February 1988	9 March 1989	6 August 1989
United Kingdom	26 October 1988	15 November 1990	15 December 1990
United States	24 February 1988	19 October 1994	18 November 1994
Uruguay		3 December 1998	2 January 1999
Uzbekistan		7 February 1994	9 March 1994
Venezuela	24 February 1988		
Viet Nam		25 August 1999	24 September 1999
Yugoslavia (F.R. of)		6 September 2001	27 April 1992

Model Legislative Provisions

To implement the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23rd September, 1971 and the Protocol for the Suppression of Unlawful Acts of Violence at Airports serving Civil Aviation signed at Montreal on 24th February 1988 and for purposes connected therewith.

NOTE

No specific penalties for the offences have been included because of the variation in sentencing practice between states. However the Convention requires penalties that reflect the seriousness of the offence and therefore maximum penalties should be set including, if appropriate, a life sentence.

Be it enacted as follows:

Short title and commencement

1. This Act may be cited as the Protection of Aircraft and Airports Act, and shall come into operation on (....)¹.

Interpretation

2. (1) In this Act, unless the context otherwise requires - "act of violence" means
 - (a) any act done outside (....)² which constitutes the offence of (....)³; and
 - (b) any act done outside (....)² which if done in (....)², would constitute such an offence as is mentioned in paragraph (a) ;

"the Convention" means the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23rd September, 1971;

"landing" includes alighting on water;

"military service" includes naval and air force service;

"the Protocol" means the Protocol for the Suppression of Unlawful Acts of Violence at Airports serving Civil Aviation signed at Montreal on 24th February 1988;

"unlawfully" -

- (a) in relation to the commission of an act in (....)², means an offence that is (apart from this Act) constituted under any law in force in (....)², and
- (b) in relation to the commission of an act outside (....)², means the commission of an act that would (apart from this Act) have been an

offence under any law in force in (....)² had it been committed in (....)².

(2) For the purposes of this Act -

- (a) the period during which an aircraft is in flight shall be deemed to include any period from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation, and, in the case of a forced landing, any period until the competent authorities take over responsibility for the aircraft and for persons and property on board; and
- (b) an aircraft shall be taken to be in service during the whole of the period which begins with the pre-flight preparation of the aircraft for a flight and ends twenty-four hours after the aircraft lands having completed that flight, and also at any time (not falling within that period) while, in accordance with paragraph (a) the aircraft is in flight.

Destroying, damaging or endangering safety of aircraft

- 3. (1) Subject to subsection (3), any person who unlawfully and intentionally -
 - (a) destroys an aircraft in service or so damages such aircraft as to render it incapable of flight or as to be likely to endanger its safety in flight; or
 - (b) commits on board an aircraft in flight any act of violence which is likely to endanger the safety of the aircraft,

shall be guilty of an offence under this Act.
- (2) Subject to subsection (4), any person who unlawfully and intentionally places or causes to be placed on an aircraft in service any device or substance which is likely to destroy the aircraft or is likely so to damage it as to render it incapable of flight or as to be likely to endanger its safety in flight shall be guilty of an offence under this Act; but nothing in this subsection shall be construed as limiting the circumstances in which the commission of any act -
 - (a) may constitute an offence under subsection (1); or
 - (b) may constitute attempting or conspiring to commit or abetting the commission of such offence.
- (3) Except as provided by subsection (4), subsections (1) and (2) apply whether any such act therein mentioned is committed in (....)² or elsewhere, whatever the nationality or citizenship of the person committing the act or whatever the State in which the aircraft is registered.

- (4) Subsections (1) and (2) do not apply to any act committed in relation to an aircraft used in military, customs or police service unless -
- (a) the act is committed in or over (....)²; or
 - (b) where the act is committed outside (....)², the person committing the act is a citizen of (....)^{2,4}.

Other acts endangering or likely to endanger the safety of aircraft

4. (1) Subject to subsections (5) and (6), any person who unlawfully and intentionally destroys or damages any property to which this section applies or interferes with the operation of such property, where the destruction, damage or interference is likely to endanger the safety of aircraft in flight, shall be guilty of an offence under this Act.
- (2) Subsection (1) applies to any property used for the provision of air navigation facilities including any land, building or ship so used, and including any apparatus or equipment so used, whether it is on board an aircraft or elsewhere.
- (3) Subject to subsections (4) and (5), any person who intentionally communicates any information which is false, misleading or deceptive in a material particular, where the communication of the information endangers the safety of an aircraft in flight or is likely to endanger the safety of an aircraft in flight, shall be guilty of an offence under this Act.
- (4) It shall be a defence for a person charged with an offence under subsection (3) to prove -
- (a) that he or she believed, and had reasonable grounds for believing, that the information was true; or
 - (b) that, when he or she communicated the information, they were lawfully employed to perform duties which consisted of or included the communication of information and that he or she communicated the information in good faith in the performance of those duties.
- (5) Subsections (1) and (3) do not apply to the commission of any act unless either the act is committed in (....)², or where the act is committed outside (....)² -
- (a) the person committing the act is a citizen of (....)²; or
 - (b) the commission of the act endangers or is likely to endanger the safety in flight of a civil aircraft registered in (....)² or chartered by demise to a lessee whose principal place of business, or (if he has no place of business) whose permanent residence is in (....)²; or
 - (c) the act is committed on board a civil aircraft which is registered or so chartered; or

- (d) the act is committed on board a civil aircraft which lands in (....)² with the person who committed the act still on board.
- (6) Subsection (1) also does not apply to any act committed outside (....)² and so committed in relation to property which is situated outside (....)² and is not used for the provision of air navigation facilities in connection with international air navigation, unless the person committing the act is a citizen of (....)².
- (7) In this section, "civil aircraft" means any aircraft other than an aircraft used in military, customs or police service.

Acts of violence at airports serving international civil aviation

- 5. (1) Any person who unlawfully and intentionally, using any device, substance or weapon-
 - (a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or
 - (b) destroys or seriously damages the facilities of an airport serving international civil aviation or an aircraft not in service located thereon or disrupts the services of the airport,

where such an act endangers or is likely to endanger safety at that airport, shall be guilty of an offence under this Act.

- (2) Subsection (1) applies whether any such act therein mentioned is committed in (....)² or elsewhere, whatever the nationality or citizenship of the person committing the act or whatever the State in which the aircraft is registered.

Abetting the commission of acts outside (....)²

- 6. Any person in (....)² who abets the commission elsewhere of any act which -
 - (a) would, but for subsection (4) of section 3, be an offence under that section; or
 - (b) would, but for subsection (5) and (6) of section 4, be an offence under that section,

shall be guilty of an offence under this Act.

Penalty

- 7. Any person guilty of an offence under this Act shall be liable on conviction to be punished with (....)⁵.

Consent for prosecution

8. No prosecution shall be instituted under this Act without the written consent of (.....)⁶.

Extradition

9. (1) There shall be deemed to be included in [the list of] extradition crimes [described in the (.....)⁷] offences under this Act and attempts to commit such offences.

- (2) Where no extradition treaty is in force between (.....)² and a State which is party to the Convention or the Convention and the Protocol, a notification (.....)⁸ may be made applying the (.....)⁷ as if the Convention or the Convention and the Protocol were an extradition treaty between (.....)² and that State; but where the (.....)⁷ is so applied, it shall have effect as if the only extradition crimes within the meaning of that Act were offences under this Act and attempts to commit such offences.
- (3) For the purposes of the (.....)⁷ any act, wherever committed, which -
- (a) is an offence under this Act or an attempt to commit such an offence, or attempt but for subsection (4) of section 3, or subsection (5) or (6) of section 4; and
 - (b) is an offence against the law of any State in the case of which the (.....)⁷ has been applied by (.....)⁹,

shall be deemed to be an offence within the jurisdiction of that State.

NOTES

1. Date of commencement or procedure by which the Statute is to be brought into force.
2. Name of country.
3. List of relevant offences.
4. The Montreal Protocol is intended to apply only to civil aircraft and provides that it shall not apply to aircraft used in military, customs or police services. This provision is, therefore, not required in order to ensure compliance with the Montreal Protocol. However, similar provisions have been included in enacting legislation in a number of Commonwealth States.
5. Maximum penalty.
6. The Attorney General or other responsible Law Officer. The purpose of this provision is to prevent prosecutions for infringements of this Statute without the consent of the Government.
7. Extradition Act or other relevant Statute or law.
8. Specify how notification is to be made e.g. by publication official government publication.
9. Specify manner of application e.g. by publication in official government publication.

CHAPTER SIX

CONVENTION ON THE PREVENTION AND PUNISHMENT OF OFFENCES AGAINST INTERNATIONALLY PROTECTED PERSONS, INCLUDING DIPLOMATIC AGENTS 1973 (‘Diplomats Convention’)

1. As the preamble states, offences against diplomats and other internationally protected persons which jeopardise their safety create a serious threat to the maintenance of normal international relations. Perhaps the most serious case in recent years was the detention for several weeks of scores of diplomats in the residence in Lima of the Japanese Ambassador to Peru. There had been an earlier, but regional, treaty on the same subject: the Convention to Prevent and Punish the Acts of Terrorism taking the Form of Offences against Persons and related Extortion that are of International Significance, adopted by the Organisation of American States on 2 February 1971 ('OAS Convention').⁵⁸

2. The Diplomats Convention follows the Hague and Montreal Conventions in many respects.⁵⁹ In considering the draft convention the Sixth Committee of the General Assembly naturally also referred repeatedly to the Vienna Convention on Diplomatic Relations 1961,⁶⁰ the Vienna Convention on Consular Relations 1963⁶¹ and the Convention on Special Missions 1969.⁶² The Diplomats Convention gives further practical effect to the provisions of those conventions and other treaties on personal inviolability and special protection.

3. The Convention was adopted by the United Nations General Assembly on 14 December 1973 and entered into force on 20 February 1977. As of September 2002 it had 121 Parties, including 24 Commonwealth States. The text of the Convention is at page 128 below. The complete list of signatures, ratifications, accessions, territorial extensions and successions is at page 133 below.

Definitions

4. Article 1(1) defines ‘internationally protected person’ (IPP) only for the purposes of the Convention. The term was new, and its use in the Convention does not affect the differing degrees of protection accorded to international persons under treaties or customary international law. Article 1(1)(a) defines an IPP as a Head of State (including any member of a collegial body performing the functions of a Head of State), a Head of Government or a Minister of Foreign Affairs, whenever any such person is in a foreign State (which of course includes a Commonwealth State), and includes family members who accompany him or her. The Vienna Convention on the Law of Treaties 1969 had already recognised the major role in international relations played by Heads of State and of Government and Foreign Ministers.⁶³

⁵⁸ UNTS Reg. No. 24381; ILM (1971), p. 255.

⁵⁹ See M. Wood, ‘Convention on the Prevention and Punishment of Offences against Internationally Protected Persons, including Diplomatic Agents’, ICLQ (1974), pp. 791-817, at p. 791-2, and generally.

⁶⁰ 500 UNTS 95 (Reg. No. 7310); UKTS (1965) 19.

⁶¹ 596 UNTS 261 (Reg. No. 8638); UKTS (1973) 14.

⁶² 1400 UNTS 231 (Reg. No. 23431).

⁶³ 1155 UNTS 331 (Reg. No. 18232); UKTS (1980) 58: Articles 7(2)(a) and 67(2). See also A. Watts, ‘The Legal Position in International Law of Heads of State, Heads of Government and Foreign Ministers’ (1994) 247 III Hague Academy of International Law, *Recueil des Cours*, p.13; R. Jennings and A. Watts (eds.), *Oppenheim’s International Law* (9th ed., 1992), pp.1034-1052.

5. *Article 1(1)(b)* includes in the definition of IPP

‘any representative or official of a State, or any official or other agent of an international organisation of an intergovernmental character, who, at the time when and in the place where a crime against him, his official premises, his private accommodation or his means of transport is committed, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity’.

Whereas *Article 1(1)(a)* applies whenever the IPP is in a foreign State, *Article 1(1)(b)* applies only to a person who is entitled to special protection ‘at the time when and in the place where’ the crime is committed. Whereas a Head of State retains special status wherever he or she is, generally diplomats and other persons who are entitled to special protection enjoy that privilege only when they are in the State to which they are accredited or when exercising official functions. In more concrete terms, the persons covered by *Article 1(1)(b)* will include those who are entitled to personal inviolability under Article 29 of the Vienna Convention on Diplomatic Relations 1969, Article 40 of the Vienna Convention on Consular Relations 1963 and Article 29 of the Special Missions Convention 1969,⁶⁴ and only under the conditions laid down in those conventions. Only the high officials or agents of international organisations, who, under the relevant treaties (such as the Convention on the Privileges and Immunities of the United Nations 1946,⁶⁵ other such multilateral treaties and headquarters agreements) are entitled to the same protection as diplomatic agents. *Article 1(1)(b)* also includes members of the family of the persons covered who form part of their household.⁶⁶

6. *Article 1(2)* defines ‘alleged offender’ as a person as to whom there is ‘sufficient evidence to determine *prima facie* that he has committed or participated in’ a crime listed in *Article 2*. The definition is not found in the other conventions. It means only that there must be grounds for believing that the person may have committed a relevant offence. Whether they exist is a matter to be determined in accordance with the law of each Party.

Articles 2 to 11 follow closely the Hague and Montreal Conventions, and so, except where there is a difference of wording (though it may not make a substantive difference), generally reference will be made back to one or other of those conventions.

The offences

7. *Article 2* provides, in paragraph 1, that

‘The intentional commission of:

- (a) a murder, kidnapping or other attack upon the person or liberty of an [IPP];
- (b) a violent attack upon the official premises, the private accommodation or the means of transport of an [IPP] likely to endanger his person or liberty;
- (c) a threat to commit any such attack;
- (d) an attempt to commit any such attack; and

⁶⁴ For citations, see notes 3, 4 and 5 above, respectively.

⁶⁵ 1 UNTS xvi (Reg. No. 4); UKTS (1946) 67.

⁶⁶ For a detailed explanation of the Vienna Convention on Diplomatic Relations 1961, see E. Denza, *Diplomatic Law* (2nd ed. OUP 1998).

(e) an act constituting participation as an accomplice in any such attack
shall be made by each [Party] a crime under its internal law.'

The acts will almost certainly already be offences under the law of each Party; and there is no requirement to create a new crime of an offence against an IPP, although some countries may choose to enact separate offences for political or policy reasons. As the opening words make clear, the offences must be committed intentionally. This means not only that negligent acts are excluded, but also the alleged offender must know *before* the act is committed that the victim is an IPP. For example, a motorist who negligently runs over a diplomat does not commit a Convention crime even if the motorist knows the person is a diplomat; but if the motorist knows the person is a diplomat and nevertheless runs him or her down intentionally, the motorist commits an offence as envisaged by the Convention. Although some States had proposed that it should only be an offence if it was done *because* of the victim's IPP status, it was decided that motive was irrelevant.

8. In subparagraph 1(a), the phrases 'murder, kidnapping or other attack' and 'other attack' must be construed (*ejusdem generis*) as serious attacks.

9. Sub-paragraph 1(b) speaks of a 'violent attack', and paragraph 2 requires the offences to be made punishable by 'appropriate penalties which take into account their *grave nature*'. This emphasises that a minor assault would not be a Convention offence. The provisions in *Article 2* of the Hague Convention and *Article 3* of the Montreal Convention, that the offences must be punished by 'severe penalties' were not followed, since that might suggest that the punishment should be greater because of the status of the victim. The new formula was followed in later conventions. In practice, a maximum sentence of life imprisonment would be appropriate.

10. *Article 2(3)* makes it clear that merely by implementing the Convention a Party does not carry out its obligations under international law to take all appropriate measures to prevent attacks on the person, freedom or dignity of an IPP.⁶⁷

Establishment of jurisdiction

11. *Article 3* follows *Article 4* of the Hague Convention and *Article 5* of the Montreal Convention, adapted as necessary. Paragraph 1 requires each Party to establish its jurisdiction over the offences when (a) they are committed in its territory or on board a ship or aircraft registered with that Party;⁶⁸ (b) when the alleged offender is one of its nationals; or (c) when the offence is committed against a person who is an IPP 'by virtue of functions which he exercises on behalf of that [Party]'. Subparagraph 1(b) is an advance on the Hague and Montreal Conventions, which do not require jurisdiction to be established over one's nationals, and was followed in later conventions. Subparagraph 1(c) applies when the victim is the Head of State etc or other representative of the Party. The provision is not found in the Hague or Montreal Conventions and represents the 'passive personality' principle.⁶⁹ It has not been followed, at least in the same terms, in the later conventions.⁷⁰

⁶⁷ See Denza (note 9 above) pp. 210-220.

⁶⁸ The Convention does not have a provision regarding designation of one State as the State of registration when two or more Parties have established a joint air transport operating organisation (such as Scandinavian Airlines System (SAS)). However, it is reasonable to imply that such Parties can so designate one of their number: see Article 5 of the Hague Convention and Article 9 of the Montreal Convention.

⁶⁹ See p. 3, para. 7, above.

12. *Article 3(2)* requires each Party to establish its jurisdiction where the alleged offender is present in its territory and it does not extradite him or her to any of the Parties mentioned in Article 3(1), that is to another Party. This provision is necessary in order to implement the *aut dedere aut judicare* rule in *Article 7*. It follows exactly *Article 4(2)* of the Hague Convention and *Article 5(2)* of the Montreal Convention.

13. *Article 3(3)* is the saving provision that makes it clear that, in addition to the jurisdiction authorised by the Convention, jurisdiction can also be exercised in accordance with domestic law, provided of course that that law is in conformity with customary international law. Starting with the Hague Convention, this provision, albeit with slight variations in wording, is found in later conventions.

Exercise of jurisdiction

14. When an alleged offender is present in the territory of a Party *Article 6(1)* requires it, ‘upon being satisfied that the circumstances so warrant’ to take ‘appropriate measures under its internal law to ensure his presence for the purpose of prosecution or extradition’.⁷¹

15. The obligation to take appropriate measures applies to every Party, whether or not the crime was committed on its territory. The wording is similar to *Article 6(1)* of both the Hague and Montreal Conventions, although they refer expressly to the possibility that the person would be taken into custody.

Aut dedere aut judicare

16. *Article 7* is the most important part of this and the other conventions (except Tokyo and Explosives), embodying as it does the principle that alleged offenders cannot escape justice. The conventions require that when an alleged offender is found in the territory of a Party it must either extradite or ‘without exception whatsoever … submit the case to its competent authorities for the purpose of prosecution’.⁷²

17. The text follows the substance of *Article 7* of both the Hague and Montreal Conventions, but omits the words ‘whether or not the offence was committed in its territory,’ which are included in the later conventions, but the omission has no substantive effect since inclusion of those words is superfluous given the unequivocal terms of the article.⁷³

Extradition

18. *Article 8* is, in substance, identical to *Article 8* of the Hague Convention. It is now standard.⁷⁴

19. However, none of the provisions affects any restriction or discretion in the law of a Party, such as non-extradition of the Party’s own nationals or of persons wanted for

⁷⁰ See Article 5(1)(d) of the Hostages Convention, Article 6(2)(b) of the Rome Convention, Article 3(2)(b) of the Rome Protocol and Article 6(2)(a) of the Bombings Convention.

⁷¹ See further, p. 7, para. 21 above.

⁷² During the negotiation of the Convention the Netherlands proposed that a Party should not be obliged to submit a case for prosecution unless it had first received and rejected a request for extradition, but this was not accepted: see Wood (note [2] above, pp. 808-9 and 811). However, the Dutch Government made a reservation to this effect on accession. It did the same with other conventions. No Party has objected.

⁷³ See further, p. 8, para. 22, above.

⁷⁴ See p 8-10, paras. 24-30, above.

‘political offences’.⁷⁵ The later conventions do not exclude the political offence exception, apart from the more recent Bombings Convention (Article 11) and the Financing Convention (Article 14).

Asylum treaties

20. *Article 12* provides that the Convention shall not affect the application of treaties on asylum in force on the date of adoption of the Convention (14 December 1973) as between those Parties which are parties to them. This provision is of very limited effect since only Latin American States are parties to such treaties, and they are unlikely to be invoked in the case of a terrorist crime.⁷⁶ However, a grant of asylum does not confer immunity from prosecution, or relieve the Party granting asylum from the obligation of submitting the case for prosecution.

Rights of the alleged offender

21. *Article 6(2)* requires that a person detained as an alleged offender shall be entitled to communicate without delay with (in practice) his or her consul, and be visited in custody by the consul. *Article 9* requires that an alleged offender shall be guaranteed fair treatment at all stages of the legal proceedings in connection with the crime. These rights are elaborated in bilateral and multilateral treaties on consular relations, such as the Vienna Convention on Consular Relations 1963,⁷⁷ and in various universal human rights treaties, such as the International Covenant on Civil and Political Rights 1966,⁷⁸ and in regional human rights treaties.

Notifications

22. *Article 6(1)* requires the Party taking measures in respect of the alleged offender to notify, directly or through the United Nations Secretary-General, various States, including the State where the crime was committed and the State of which the person is a national. *Article 10* requires the Party where an alleged offender is prosecuted to communicate the outcome of the proceedings to the United Nations Secretary-General, who then transmits the information to the other Parties.

Cooperation

23. *Article 4* requires the Parties to cooperate in the prevention of Convention offences, in particular by trying to prevent preparations to commit them and exchanging information and co-ordinating preventive measures. *Article 5(1)* requires the Party in whose territory an offence has been committed, and which has reason to believe that the alleged offender has fled from there, to tell all other States concerned about the crime and the identity of the alleged offender. *Article 5(2)* requires a Party which has information about the victim or the circumstances of the crime to provide, subject to its internal law, this information to the Party of the IPP victim.

24. *Article 10* follows closely the Hague and Montreal Conventions. It requires Parties to assist each other with criminal proceedings (which would include pre-trial proceedings), including supplying evidence. The obligation does not affect any obligations under mutual legal assistance treaties. This, and the other requirements for co-operation, are inevitably subject to the domestic law and procedure of the Parties, and to what is practicable.

⁷⁵ See p. 10, paras. 31-2, above.

⁷⁶ See, Wood (note 2 above), pp. 813-5.

⁷⁷ Note 4 above.

⁷⁸ 999 UNTS 171 (Reg. No. 14668); ILM (1967), p. 1465; UKTS (1977) 6.

Disputes

25. *Article 13* contains the usual provision for the settlement of disputes between two or more Parties concerning the interpretation or application of the Convention.⁷⁹

Reservations

26. In addition to a reservation under *Article 13(2)*, a Party can make a reservation regarding any other provision of the Convention, provided that it is not contrary to the object and purpose of the Convention.⁸⁰ So far only seven Parties have made reservations.⁸¹

Accession or succession

27. If a State did not sign the Convention by 31 December 1974, it cannot do so now and then ratify the Convention, but it can become a Party by depositing an instrument of accession with the United Nations Secretary-General (*Article 16*). A State that has become independent may be able to succeed formally to the Convention.⁸² The Convention can be denounced (*Article 19*).

Implementing legislation

28. Model Legislative Provisions are at page 137 below. However, careful consideration will have to be given by each State which is considering becoming a Party to the Convention as to its precise needs for the content of the legislation.

⁷⁹ See p. 10, para. 33, above.

⁸⁰ See p. 11, para. 34, above.

⁸¹ See *Multilateral Treaties deposited with the Secretary-General*, Ch. XVIII. 7 on www.un.org.

⁸² See p. 11, para. 35, above.

**CONVENTION ON THE PREVENTION AND PUNISHMENT OF
CRIMES AGAINST INTERNATIONALLY PROTECTED PERSONS,
INCLUDING DIPLOMATIC AGENTS**

THE STATES PARTIES TO THIS CONVENTION,

HAVING IN MIND the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and the promotion of friendly relations and co-operation among States,

CONSIDERING that crimes against diplomatic agents and other internationally protected persons jeopardizing the safety of these persons create a serious threat to the maintenance of normal international relations which are necessary for co-operation among States,

BELIEVING that the commission of such crimes is a matter of grave concern to the international community,

CONVINCED that there is an urgent need to adopt appropriate and effective measures for the prevention and punishment of such crimes,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

For the purposes of this Convention:

1. "Internationally protected person" means:
 - (a) a head of State, including any member of a collegial body performing the functions of a Head of State under the constitution of the State concerned, a Head of Government or a Minister for Foreign Affairs, whenever any such person is in a foreign State, as well as members of his family who accompany him;
 - (b) any representative or official of a State or any official or other agent of an international organization of an intergovernmental character who, at the time when and in the place where a crime against him, his official premises, his private accommodation or his means of transport is committed, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity, as well as members of his family forming part of his household;
2. "alleged offender" means a person as to whom there is sufficient evidence to determine *prima facie* that he has committed or participated in one or more of the crimes set forth in Article 2.

ARTICLE 2

1. The international commission of:
 - (a) a murder, kidnapping or other attack upon the person or liberty of an internationally protected person;
 - (b) a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty;

- (c) a threat to commit any such attack;
 - (d) an attempt to commit any such attack; and
 - (e) an act constituting participation as an accomplice in any such attack;
- shall be made by each State Party a crime under its internal law.

2. Each State Party shall make these crimes punishable by appropriate penalties which take into account their grave nature.

3. Paragraphs 1 and 2 of this article in no way derogate from the obligations of States Parties under international law to take all appropriate measures to prevent other attacks on the person, freedom or dignity of an internationally protected person.

ARTICLE 3

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set forth in article 2 in the following cases:
 - (a) when the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;
 - (b) when the alleged offender is a national of that State;
 - (c) when the crime is committed against an internationally protected person as defined in Article 1 who enjoys his status as such by virtue of functions which he exercises on behalf of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these crimes in cases 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 internal law.

ARTICLE 4

States Parties shall co-operate in the prevention of the crimes set forth in Article 2, particularly by:

- (a) taking all practicable measures to prevent preparations in their respective territories for the commission of those crimes within or outside their territories;
- (b) exchanging information and coordinating the taking of administrative and other measures as appropriate to prevent the commission of those crimes.

ARTICLE 5

1. The State Party in which any of the crimes set forth in Article 2 has been committed shall, if it has reason to believe that an alleged offender has fled from its territory, communicate to all other States concerned, directly or through the Secretary-General of the United Nations, all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender.

2. Whenever any of the crimes set forth in Article 2 has been committed against an internationally protected person, any State Party which has information concerning the victim and the circumstances of the crime shall endeavour to transmit it, under the conditions provided for in its internal law, fully and promptly to the State Party on whose behalf he was exercising his functions.

ARTICLE 6

1. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take the appropriate measures under its internal law so as to ensure his presence for the purpose of prosecution or extradition. Such measures shall be notified without delay directly or through the Secretary-General of the United Nations to:

- (a) the State where the crime was committed;
- (b) the State or States of which the alleged offender is a national or, if he is a stateless person, in whose territory he permanently resides;
- (c) the State or States of which the internationally protected person concerned is a national or on whose behalf he was exercising his functions;
- (d) all other States concerned; and
- (e) the international organization of which the internationally protected person concerned is an official or an agent.

2. Any person regarding whom the measures referred to in paragraph 1 of this Article are being taken shall be entitled:

- (a) to communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to protect his rights or, if he is a stateless person, which he requests and which is willing to protect his rights; and
- (b) to be visited by a representative of that State.

ARTICLE 7

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

ARTICLE 8

1. To the extent that the crimes set forth in Article 2 are not listed as extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every future extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may, if it decides to extradite, consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the procedural provisions and the other conditions of the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the procedural provisions and the other conditions of the law of the requested State.

4. Each of the crimes shall be treated, for the purpose of extradition between States Parties, 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 paragraph 1 of Article 3.

ARTICLE 9

Any person regarding whom proceedings are being carried out in connexion with any of the crimes set forth in Article 2 shall be guaranteed fair treatment at all stages of the proceedings.

ARTICLE 10

1. States Parties shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of the crimes set forth in Article 2, including the supply of all evidence at their disposal necessary for the proceedings.

2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

ARTICLE 11

The State Party where an alleged offender is prosecuted shall communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

ARTICLE 12

The provisions of this Convention shall not affect the application of the Treaties on Asylum, in force at the date of the adoption of this Convention, as between the States which are parties to those Treaties; but a State Party to this Convention may not invoke those Treaties with respect to another State Party to this Convention which is not a party to those Treaties.

ARTICLE 13

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by 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 or 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 Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

ARTICLE 14

This Convention shall be opened for signature by all States, until 31 December 1974, at United Nations Headquarters in New York

ARTICLE 15

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations

ARTICLE 16

This Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE 17

This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession

ARTICLE 18

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect six months following the date on which notification is received by the Secretary-General of the United Nations.

ARTICLE 19

The Secretary-General of the United Nations shall inform all States, *inter alia*:

- (a) of signatures to this Convention, of the deposit of instruments of ratification or accession in accordance with Articles 14, 15 and 16 and of notifications made under Article 18;
- (b) of the date on which this Convention will enter into force in accordance with Article 17.

ARTICLE 20

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on 14 December 1973.

**CONVENTION ON THE PREVENTION AND PUNISHMENT OF CRIMES
AGAINST INTERNATIONALLY PROTECTED PERSONS, INCLUDING
DIPLOMATIC AGENTS**
New York, 14 December 1973

Entry into force: 20 February 1977, in accordance with article 17 (1).

Status: 121 Parties.

State	Signature	Ratification, Accession (a), Succession (d)
Albania		22 Jan 2002 a
Algeria		7 Nov 2000 a
Antigua and Barbuda		19 Jul 1993 a
Argentina		18 Mar 1982 a
Armenia		18 May 1994 a
Australia	30 Dec 1974	20 Jun 1977
Austria		3 Aug 1977 a
Azerbaijan		2 Apr 2001 a
Bahamas		22 Jul 1986 a
Barbados		26 Oct 1979 a
Belarus	11 Jun 1974	5 Feb 1976
Belize		14 Nov 2001 a
Bhutan		16 Jan 1989 a
Bolivia		22 Jan 2002 a
Bosnia and Herzegovina		1 Sep 1993 d
Botswana		25 Oct 2000 a
Brazil		7 Jun 1999 a
Brunei Darussalam		13 Nov 1997 a
Bulgaria	27 Jun 1974	18 Jul 1974
Burundi		17 Dec 1980 a
Cameroon		8 Jun 1992 a
Canada	26 Jun 1974	4 Aug 1976
Cape Verde		10 Sep 2002 a
Chile		21 Jan 1977 a
China		5 Aug 1987 a
Colombia		16 Jan 1996 a
Costa Rica		2 Nov 1977 a
Côte d'Ivoire		13 Mar 2002 a
Croatia		12 Oct 1992 d
Cuba		10 Jun 1998 a
Cyprus		24 Dec 1975 a
Czech Republic		22 Feb 1993 d
Democratic People's Republic of		1 Dec 1982 a

Korea

Democratic Republic of the Congo		25 Jul 1977 a
Denmark	10 May 1974	1 Jul 1975
Dominican Republic		8 Jul 1977 a
Ecuador	27 Aug 1974	12 Mar 1975
Egypt		25 Jun 1986 a
El Salvador		8 Aug 1980 a
Estonia		21 Oct 1991 a
Finland	10 May 1974	31 Oct 1978
Gabon		14 Oct 1981 a
Germany	15 Aug 1974	25 Jan 1977
Ghana		25 Apr 1975 a
Greece		3 Jul 1984 a
Grenada		13 Dec 2001 a
Guatemala	12 Dec 1974	18 Jan 1983
Haiti		25 Aug 1980 a
Hungary	6 Nov 1974	26 Mar 1975
Iceland	10 May 1974	2 Aug 1977
India		11 Apr 1978 a
Iran (Islamic Republic of)		12 Jul 1978 a
Iraq		28 Feb 1978 a
Israel		31 Jul 1980 a
Italy	30 Dec 1974	30 Aug 1985
Jamaica		21 Sep 1978 a
Japan		8 Jun 1987 a
Jordan		18 Dec 1984 a
Kazakhstan		21 Feb 1996 a
Kenya		16 Nov 2001 a
Kuwait		1 Mar 1989 a
Lao People's Democratic Republic		22 Aug 2002 a
Latvia		14 Apr 1992 a
Lebanon		3 Jun 1997 a
Liberia		30 Sep 1975 a
Libyan Arab Jamahiriya		25 Sep 2000 a
Liechtenstein		28 Nov 1994 a
Malawi		14 Mar 1977 a
Maldives		21 Aug 1990 a
Mali		12 Apr 2002 a
Malta		11 Nov 2001 a
Mauritania		9 Feb 1998 a
Mexico		22 Apr 1980 a

Mongolia	23 Aug 1974	8 Aug 1975
Morocco		9 Jan 2002 a
Nepal		9 Mar 1990 a
Netherlands		6 Dec 1988 a
New Zealand		12 Nov 1985 a
Nicaragua	29 Oct 1974	10 Mar 1975
Niger		17 Jun 1985 a
Norway	10 May 1974	28 Apr 1980
Oman		22 Mar 1988 a
Pakistan		29 Mar 1976 a
Palau		14 Nov 2001 a
Panama		17 Jun 1980 a
Paraguay	25 Oct 1974	24 Nov 1975
Peru		25 Apr 1978 a
Philippines		26 Nov 1976 a
Poland	7 Jun 1974	14 Dec 1982
Portugal		11 Sep 1995 a
Qatar		3 Mar 1997 a
Republic of Korea		25 May 1983 a
Republic of Moldova		8 Sep 1997 a
Romania	27 Dec 1974	15 Aug 1978
Russian Federation	7 Jun 1974	15 Jan 1976
Rwanda	15 Oct 1974	29 Nov 1977
Saint Vincent and the Grenadines		12 Sep 2000 a
Seychelles		29 May 1980 a
Slovakia		28 May 1993 d
Slovenia		6 Jul 1992 d
Spain		8 Aug 1985 a
Sri Lanka		27 Feb 1991 a
Sudan		10 Oct 1994 a
Sweden	10 May 1974	1 Jul 1975
Switzerland		5 Mar 1985 a
Syrian Arab Republic		25 Apr 1988 a
Tajikistan		19 Oct 2001 a
The Former Yugoslav Republic of Macedonia		12 Mar 1998 d
Togo		30 Dec 1980 a
Trinidad and Tobago		15 Jun 1979 a
Tunisia	15 May 1974	21 Jan 1977
Turkey		11 Jun 1981 a
Turkmenistan		25 Jun 1999 a

Ukraine	18 Jun 1974	20 Jan 1976
United Kingdom of Great Britain and Northern Ireland	13 Dec 1974	2 May 1979
United States of America	28 Dec 1973	26 Oct 1976
Uruguay		13 Jun 1978 a
Uzbekistan		19 Jan 1998 a
Viet Nam		2 May 2002 a
Yemen		9 Feb 1987 a
Yugoslavia		12 Mar 2001 d

**MODEL LEGISLATIVE PROVISIONS TO IMPLEMENT THE
CONVENTION ON THE PREVENTION AND PUNISHMENT OF CRIMES
AGAINST INTERNATIONALLY PROTECTED PERSONS INCLUDING
DIPLOMATIC AGENTS**

NOTE

No specific penalties for the offences have been included because of the variation in sentencing practice between states. However the Convention requires penalties that reflect the seriousness of the offence and therefore maximum penalties should be set including, if appropriate, a life sentence.

Whereas the Convention on the Prevention and Punishment of crimes against Internationally Protected Persons, including diplomatic agents was adopted in New York on December 14, 1973:

And Whereas(name of country) intends to accede to the said Convention by depositing an instrument of accession with the Secretary General of the United Nations:

And Whereas it is necessary make legal provision to give effect to(name of country) obligations under the said Convention:

Now therefore, be it enacted by the by the Parliament of(name of country) as follows:-

Short title and date of operation

1. This Act may be cited as the Internationally Protected Persons Act, and shall come into operation on such date as the Minister (responsible for Foreign Affairs) declares, by the Order published in the Gazette, as the date on which the Convention enters into force in respect of(name of country).

Interpretation

2. In this Act, unless the context otherwise requires-

“alleged offender” means a person against whom there is sufficient evidence in support of a *prima facie* case that he or she has committed an offence under section 3,

“Convention” means the Convention on the Prevention and Punishment of crimes against Internationally Protected Persons, including diplomatic agents, adopted in New York on December 14, 1973;

“Convention State” means a State declared by the Minister (responsible for Foreign Affairs), by Order published in the Gazette, to be a party to the Convention;

Internationally Protected person “means –

- (a) a-
- (i) Head of State (including any member of a collegial body performing the functions of a Head of State),
 - (ii) Head of Government, or
 - (iii) Minister responsible for Foreign Affairs,

whenever such person is in a foreign State, and includes a member of his or her family accompanying him or her; or

- (b) any,-
- (i) representative or official of a State ; or
 - (ii) official or other agent of an International organisation of an inter governmental character,

who, at the time when and in the place where, crime against him or her , his or her official premises, his or her private accommodation or his or her means of transport is committed, is entitled under international law, to special protection from attack on his person, freedom or dignity as well as on his or her family forming part of his or her household.

Offences

3. Every person who intentionally –

- (a) commits murder ,kidnapping or other attack on the person or liberty of an internationally protected person;
- (b) commits a violent attack on the official premises , private accommodation or means of transport, of an internationally protected person , likely to endanger his or her person or liberty ;
- (c) threatens to commit any such an attack;
- (d) attempts to commit any such attack;
- (e) commits any such act which constitutes participation as an accomplice in any such attack,

commits an offence under this Act and shall on conviction be liable to imprisonment for a term of () years.

NOTE

If further specificity is needed in the offence provision the term “attach” can be defined by reference to a list of offences.

Jurisdiction

NOTE

The Convention contains a “prosecute or extradite” obligation. In order to meet this requirement, a State must have the jurisdiction to prosecute an offence where the person is present on that State’s territory, regardless of the fact that no basis of jurisdiction set out in 4 (2) (a) – (c) exists. In order to meet this obligation, the State needs to have jurisdiction arising from the person’s presence in that state. One way to incorporate that jurisdiction is through a universal jurisdiction clause based on the presence of the person. This has been reflected in sub-section 4(2) (d). If that is considered to be broad, the bracketed and italicized language at the end of 4(2) (d) can be added limiting the application of the section to cases where extradition is not possible. While this second approach is more limited, there may be problems of proof arising from the need to establish that extradition is not possible.

4. (1) All offences under this Act shall be tried by the High Court (highest court exercising original criminal jurisdiction).
- (2) The High Court shall have jurisdiction to try an offence under section 3 if –
 - (a) the act constituting the offence is committed in (name of country) or on board a ship or aircraft registered in (name of country); or
 - (b) the alleged offender is a national of (name of country), whether the act constituting the offence is committed in or outside (name of country);
 - (c) the act constituting the offence is committed against an internationally protected person exercising functions on behalf of (name of country), whether the act constituting the offence was committed in or outside (name of country);
 - (d) the act constituting the offence is committed by a person who is, after the commission of the act, present in (name of country), whether such act was committed in or outside (name of country), [*and he or she cannot be extradited to a foreign state having jurisdiction over the offence.*]

Extradition

5. (1) The offences described in section 3 shall be deemed to be extraditable offences under the Extradition Act, and accordingly, the provisions of that Act shall apply to, and in relation to, extradition in respect of those offences.
- (2) Where there is, on the date on which this Act comes into operation, an extradition arrangement in force between the Government of (name of country) and a Convention State, such arrangement shall, for the purposes of the Extradition Act, be deemed to include provision for extradition in respect of the offences described in Section 3.

- (3) Where there is no extradition arrangement between the Government of (name of country) and a Convention State, the Minister (of Foreign Affairs) may, by Order published in the Gazette, treat the Convention, for the purposes of the Extradition Act, as an extradition arrangement between the Government of (name of country) and such Convention State, providing for extradition in respect of the offences described in section 3.
- (4) Where the Government of (name of country) accedes to request by a Convention State for the extradition of a person accused of an offence described in section 3, the act constituting such offence shall, for the purposes of the Extradition Act, be deemed to have been committed not only in the place where it was committed but also within the jurisdiction of the requesting Convention State.

CHAPTER SEVEN

INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES 1979

(‘Hostages Convention’)

1. The taking of hostages as a means of ensuring the execution of armistices and other agreements, or as a means of punishment and reprisal, was an accepted part of the ancient, ritualised law of war. However, it was not until the twentieth century that the capture and murder of civilian hostages became a common military strategy. The Nazis were infamous for their policy of reprisals against civilian populations. The killing of civilian hostages was declared a war crime by the Charter of the Nuremberg Tribunal.⁸³ Article 34 of the Fourth Geneva Convention 1949⁸⁴ prohibits the taking of civilian hostages.
2. Hostage-taking has in more recent times appeared in a new guise as a favoured weapon of the terrorist. Beginning sporadically in the late 1960’s, and growing steadily thereafter, the taking of hostages became common. Some of the more prominent examples were the seizure and murder of Israeli athletes at the 1972 Munich Olympics; the seizure of 60 OPEC officials in Vienna in 1975; the 1976 hijacking of an Air France flight to Entebbe and the detention of the Jewish passengers; the prolonged 1979-1981 detention of the American embassy staff in Tehran; the capture of the Dominican embassy in Bogotá during a diplomatic reception in February 1980; the siege of the Iranian embassy in London in April 1980; and the spate of hostage-taking in Lebanon in the mid- and late-1980s.⁸⁵ More recently, terrorists held hostage for weeks scores of diplomats in the Japanese Embassy Residence in Lima, Peru.
3. Control of hostages allows weak, often obscure, groups to extort concessions from otherwise powerful governments. Hostage-takers present their demands to governments as if they were co-belligerents and demand that states treat them as equal in status. In this way terrorist groups are able to publicise their cause, obtain ransoms, and sometimes secure the release of imprisoned comrades. Hostage-taking is an alarming manifestation of international terrorism which disrupts the internal peace and security of states, and wrests control of policy and action away from governments. It is a violation of the hostages’ fundamental rights. Hostages are typically innocent civilians who have, at best, tenuous connections with the terrorists’ aims or grievances.
4. States therefore took steps to try to eliminate this terrorist threat. The International Convention Against the Taking of Hostages was adopted by the United Nations General Assembly on 17 December 1979 and entered into force on 3 June 1983. As of September 2002 it had 110 Parties, including 25 Commonwealth States and two others which signed over 20 years ago, but have yet to ratify. The United

⁸³ Charter of the International Military Tribunal (82 UNTS 279; UKTS (1945) 4), Art. 6 (b).

⁸⁴ Convention Relative to the Protection of Civilian Persons in Time of War (75 UNTS 287).

⁸⁵ See J. Lambert, *Terrorism and Hostages in International Law* (Grotius, Cambridge, 1990, pp. 2-5), hereinafter, ‘Lambert’.

Kingdom ratified the Convention on 22 December 1982 in respect of all territories then under its sovereignty. Therefore, those which have since become independent, and have not acceded to the Convention, could now formally succeed to it. The text of the Convention is at page 149 below and the complete list of signatures, ratifications, accessions and successions is at page 156 below.

The offences

5. *Article 1(1)* defines hostage-taking as, first, the seizure or detention by a person of another person ('the hostage') *and*, secondly, a threat to kill, injure or continue to detain him or her unless a third party does or abstains from doing any act. This condition for release can be explicit or implicit; sometimes it is not clear if the hostage will in fact be released even if the demand is acceded to. The third party can be a State, an international intergovernmental organisation, a natural or juridical person⁸⁶ or a group of persons – in fact any natural or legal person. The act can be committed by a private individual or by the agent of a State (see page 80, paragraph 23, above about *Lockerbie*). There is no requirement that force be used to effect the taking of the hostage (cf. *Article 1(a)* of the Hague Convention); the victim might be tricked into going with his keepers, but the element of detention implies a degree of force or the threat of it. In common with the earlier conventions (except for the Diplomats Convention, *Article 2(1)(c)*), the Convention does not make it an offence merely to *threaten* to take a hostage, though attempts are of course included (see below).

6. The indispensable element of the offence is the compulsion of a third party to act or to abstain from acting as a condition for release of the hostage. Although 'ordinary' kidnapping normally - though not always - seeks to compel third parties to do something (perhaps pay a ransom), in practice hostage-taking transcends kidnapping since the demands of hostage-takers are almost invariably political, using that term in its broadest sense. Nevertheless, the wording is wide enough to cover kidnapping, though most cases of kidnapping for non-political purposes have no international element.

7. This latter point is partly reflected in *Article 13*, which provides that the Convention does not apply if the act is committed within one State, both the hostage-taker and his victim are nationals of that State, and the alleged offender is found there. But the Convention will apply if the alleged offender then flees to the territory of another Party. In contrast to kidnapping, in practice there is often more than one hostage or more than one offender (the hijacking of an aircraft will usually amount also to a hostage-taking), and it is therefore that much more likely that they will not all be nationals of the State where the act was committed. The Convention will also apply if one of the alleged offenders is accused of committing an ancillary offence (*Article 1(2)*), such as being an accomplice in preparing for the act, in another State. It has been suggested that even if all the elements of *Article 13* are satisfied, the act might in certain circumstances still come within the Convention if the purpose is to

⁸⁶ The International Committee of the Red Cross (ICRC) is an international organisation but is not 'intergovernmental'. In the context of the Convention this does not matter since a body like the ICRC is covered by the reference to 'juridical person'. Most references in treaties to 'international organisations' implicitly mean intergovernmental, and include regional organisations.

pressure another State or a person in another State, but the point does not seem to have been tested.⁸⁷

Non-human victims

8. Since the Convention concerns only taking hostage natural persons, seizure or threatening to seize material objects (the Mona Lisa?), or pedigree animals, is not covered.

Ancillary offences

9. The Convention applies also to all attempted hostage-taking, and participation as an accomplice in the commission, or attempted commission, of an act of hostage-taking (*Article 1(2)*).

10. As with the other conventions (apart from Tokyo and Explosives), each Party must make the offences punishable by appropriate penalties which take into account their ‘grave nature’(*Article 2*). In practice this means a maximum of life imprisonment.

Armed conflicts

11. Although there were proposals to limit the protection of the Convention to ‘innocent’ hostages, and to justify the taking of hostages in certain situations, such as by national liberation movements (NLMs), these were not accepted. However, unique among the conventions, the Convention has, in *Article 12*, a provision concerning the relationship with the Geneva Conventions 1949 (and the 1977 Additional Protocols thereto).⁸⁸ The article excludes from the scope of the Convention hostage-taking which amounts to a ‘grave breach’ of the Geneva Conventions for which the Parties to those Conventions have an obligation to prosecute or extradite. Unfortunately, the tortuous language of Article 12 - in particular the last few lines - has led some writers into the dangerous belief that hostage-taking by NLMs is legitimised by the Convention.⁸⁹ This is quite wrong. The effect of the article is simply that in certain circumstances where an alleged hostage-taken can be prosecuted for a war crime pursuant the Geneva Conventions, he or she cannot be prosecuted for an offence under the Hostages Convention.

Establishment of jurisdiction

12. *Article 5* follows the Hague Convention, adapted as necessary. Paragraph 1 requires each Party to establish its jurisdiction over Convention offences when they are committed (a) in its territory or on board a ship or aircraft registered in that State; (b) by any of its nationals or, if the party considers it appropriate, stateless persons having their residence in its territory; (c) in order to compel the Party to do or abstain from doing any act; or (d) when the *hostage* is a national of the Party, if that Party considers it appropriate. Thus part of (b) and the whole of (d) authorises, but does not require, establishment of jurisdiction.

13. Paragraph 2 requires each Party to establish its jurisdiction where the alleged offender is present in its territory and it does not extradite him to any of the Parties

⁸⁷ Lambert, pp. 302-7.

⁸⁸ 75 UNTS 3 (Reg. Nos. 970-3) and 1125 UNTS 3 (Reg. No. 17512); UKTS (1958) 39 and UKTS (1999) 29 and 30.

⁸⁹ See Lambert, pp. 263-298, though *he* does get it right.

mentioned paragraph 1. This quasi-universal jurisdiction provision complements the *aut dedere aut judicare* rule in Article 8(1) (see below).

14. Paragraph 3 is the standard provision confirming that, in addition to the jurisdiction authorised by the Convention, criminal jurisdiction can also be exercised in accordance with domestic law, provided of course that it is in conformity with customary international law.

Exercise of jurisdiction

15. Article 6 follows generally the scheme of Article 6 of the Montreal Convention. Paragraph 1 provides that when an alleged offender is present in the territory of a Party, and it is ‘satisfied that the circumstances so warrant’, that Party must, in accordance with its law, take the person into custody, or take such other measures to enable any criminal or extradition proceedings to be instituted. The limited discretion is common to the conventions, but must be exercised reasonably and in good faith.⁹⁰

16. Paragraph 1 also requires the Party in whose territory an alleged offender is found to make a preliminary inquiry into the facts of the case. This is done in accordance with domestic law. However, while the Party must be satisfied that the circumstances warrant custodial measures to ensure the presence of the suspect, the Convention does not provide a similar discretion to refrain from instituting this preliminary inquiry. While a Party may trust the alleged offender not to disappear, any potential sympathy with the act's underlying motivation will not permit it either to evade its duty to conduct a proper inquiry, at the very least an examination of the evidence by police.

Aut dedere aut judicare

17. Article 8(1) is the most important part of this and the other conventions (except Tokyo and Explosives), representing as it does the principle that alleged offenders cannot escape justice. Irrespective of where the offence was committed, if an alleged offender is found in the territory of a Party it must either extradite or submit the case to its competent authorities for the purposes of prosecution.⁹¹ The text follows the substance of Article 7 of the Hague Convention.

Extradition

18. Article 10 is the standard extradition provision.⁹² However, none of these provisions affect any restriction or discretion in the law of a Party, such as non-extradition of the Party's own nationals or of persons wanted for ‘political offences’. None of the conventions excludes the political offence exception, apart from the more recent Bombings Convention (Article 11) and Financing Convention (Article 14).⁹³

19. Article 9 is an important addition to the standard extradition clauses in the conventions. Paragraph 1 was at first controversial,⁹⁴ but was included in the later Bombings and Financing Conventions. It places an obligation on a Party to refuse an

⁹⁰ See further at p. 7, para. 21 above.

⁹¹ See p. 8, para. 22, above.

⁹² See p. 8, paras. 24-30, above.

⁹³ See p. 10, paras. 31-2, above for details.

⁹⁴ See J. Lambert, pp. 209-225, for a detailed account of the drafting.

extradition request if it has ‘substantial grounds for believing’ that the request (a) has been made for the purpose of prosecuting or punishing the person ‘on account of his race, religion, nationality, ethnic origin or political opinion’; or (b) that the person’s position may be prejudiced for any of those reasons or because his or her State would not be able effectively to protect him or her. The requested Party thus has a certain degree of discretion, but if the request is refused it must then submit the case to its prosecuting authorities.

20. These protective provisions are found in some multilateral and bilateral extradition and related treaties, in particular in the Scheme relating to the Rendition of Fugitive Offenders within the Commonwealth, paragraph 9.95 The substance of paragraph 1 may appear at first sight similar to the political offence exception (see paragraph 18 above). However, that focuses on the offence itself: has the request been made for an offence which itself is ‘political’? In contrast, paragraph 1 focuses on the *motives* of the requesting State and the treatment that the person is likely to get from it. In other words, extradition cannot be refused just because the person’s political views motivated him or her to commit the act; but it can be refused when extradition has been requested in order to prosecute a person for his or her views, rather than the hostage-taking – and it may not always be easy to draw what may be a fine line between the two. The principle of the provision is similar in concept to that of *non-refoulement* in Article 33 of the Refugees Convention 1951.⁹⁶ Paragraph 2 has the effect of automatically modifying any provisions of treaties which the Parties have with each other (but not of course with non-Parties) to the extent that they are incompatible with the Convention. The modification applies only in respect of the Convention offences.

Asylum

21. *Article 15* provides that the Convention does not affect the application of treaties on asylum in force on the date of adoption of the Convention (17 December 1979) as between those Parties to the Convention which are bound by such treaties. This is the concept of political asylum. The provision is of limited effect since only Latin American States are parties to such treaties, and they are unlikely to be invoked in the case of a terrorist crime. However, a grant of asylum does not confer immunity from prosecution, or relieve the Party granting asylum from the obligation of submitting the case for prosecution.

Protection of the alleged offender

22. In *Article 6*, paragraph 3 follows Article 6(2) of the Diplomats Convention in requiring that a person detained as an alleged offender shall be entitled to communicate without delay with (in practice) his or her consul, and be visited in custody by the consul. Paragraph 4 makes it explicit that, although these rights must be accorded in accordance with domestic law, full effect must be given to the rights. This useful addition is repeated in the later conventions. Paragraph 5 is new. It provides that paragraphs 3 and 4 are without prejudice to the right of a Party having a claim to jurisdiction under *Article 5(1)(b)*, i.e. where the alleged offender is one of its

⁹⁵ See website of the Commonwealth: <http://www.thecommonwealth.org/>

⁹⁶ 189 UNTS 137 (Reg. No. 2545); UKTS (1954) 39. It has been argued that the principle applies to extradition: Lambert, pp. 211-2.

nationals, to invite the International Committee of the Red Cross (ICRC) to communicate with and visit the person.⁹⁷

23. *Article 8(2)* follows *Article 9* of the Diplomats Convention in requiring that an alleged offender be guaranteed fair treatment at all stages of the legal proceedings in connection with the crime. These rights are elaborated in bilateral and multilateral treaties on consular relations, such as the Vienna Convention on Consular Relations 1963,⁹⁸ and in various universal human rights treaties, such as the International Covenant on Civil and Political Rights 1966,⁹⁹ and in regional human rights treaties. The paragraph adds that the alleged offender shall also enjoy all the rights and guarantees provided by the law of the Party where the proceedings take place. The effect of this addition is unclear, and it may add nothing of substance,¹⁰⁰ but has been dutifully repeated in the later conventions.

Assistance with proceedings

24. *Article 10* follows closely the previous conventions in requiring Parties to assist each other with criminal proceedings (which would include pre-trial proceedings), including supplying evidence. The obligation does not affect any obligations under mutual legal assistance treaties. This, and the other requirements for co-operation, are inevitably subject to the domestic law and procedure of the Parties, and to what is practicable.

Notifications

25. *Article 6* follows, in paragraph 2, the provisions of *Article 6(1)* of the Diplomats Convention, albeit with some modifications and additions. It requires the Party with custody of the alleged offender to notify that fact, directly or through the United Nations Secretary-General, to: (a) the State where the offence was committed; (b) the State against which compulsion has been directed or attempted; (c) the State of which the natural or juridical person against whom compulsion has been directed or attempted is a national; (d) the State of which the hostage is a national or the territory in which he or she has habitual residence; (e) the State of which the alleged offender is a national or, if the person is stateless, in the territory of habitual residence; (f) the international intergovernmental organisation against which compulsion has been directed or attempted; and (g) all other States concerned. For this purpose the States do not have to be Parties. Paragraph 6 follows the Hague and Montreal Conventions in requiring the Party making the preliminary inquiry contemplated in paragraph 1 to report promptly its findings to the States and the organisation listed in paragraph 2 (The Diplomats Convention does not require a preliminary inquiry to be held.)

26. *Article 7* is essentially the same as *Article 11* of the Diplomats Convention in requiring the Party where an alleged offender is prosecuted to communicate the outcome of the proceedings to the United Nations Secretary-General, who then transmits the information to the other States and international organisations concerned. Thus the amount of information about the offence is much less than required by *Article 11* of the Hague Convention, *Article 13* of the Montreal Convention or *Article 15* of the Rome Convention.

⁹⁷ For a critical commentary on the provision, see Lambert, pp. 181-3.

⁹⁸ 596 UNTS 261 (Reg. No. 8638); UKTS (1973) 14.

⁹⁹ 999 UNTS 171 (Reg. No. 14668); ILM (1967), p. 1465; UKTS (1977) 6.

¹⁰⁰ Lambert, p. 207.

Victims

27. The first paragraph of *Article 3* places a obligation on the Party in whose territory a hostage is being held to take 'all measures it considers appropriate' to ease situation of the hostage and, in particular, to secure release and aid with departure. The provision is similar to *Article 9* of the Hague Convention. The first obligation is humanitarian and would include trying to arrange the provision of material comforts and communication for the hostage with his or her family. But the provision emphasises the importance of securing release. Although the Party has a discretion, it must therefore, as a minimum, try to find out where the hostage is being held, demand release and consider all feasible options to secure his or her release. These efforts should continue for as long as necessary, but this does not mean that Parties are obliged to concede to all or any of the hostage takers' demands. Nor is any Party obliged to permit other States to attempt a rescue in its territory or to attempt such rescues on their own. The many members of the diplomatic corps held hostage in the Japanese embassy residence in Lima, Peru were rescued by Peruvian forces without the agreement of the Japanese or other governments affected.

28. *Article 14* confirms that nothing in the Convention justifies violation of the territorial integrity or political independence of a State in contravention of the United Nations Charter. This was a controversial clause suggested originally by those States which were opposed to the rescue mission to Entebbe in 1976 to free the passengers of the hijacked Air France aircraft en route from Tel Aviv to Paris. The sweeping terms of the original draft were tempered by the addition of the reference to the Charter, *Article 51* of which confirms the inherent right of a State to defend itself, and this extends to the use of force in another State for the purpose of protecting one's nationals when the other State is unable or unwilling to take the necessary action.¹⁰¹

29. Nevertheless, the terms of the provision are broad and suggest that a Party in whose territory the hostage is held could in extreme circumstances agree to grant immunity from prosecution or extradition in return for release of the hostage. There is a tension between the provision and the obligation in *Article 8(1)* to 'extradite or prosecute', which is expressed to be 'without exception whatsoever'. A Party might conclude that the only way to obtain the release of the hostage is to grant immunity to the offenders and let them leave the country. This would, of course, not affect the obligation of other Parties to prosecute the alleged offenders.¹⁰²

30. *Article 3(2)* provides that if any object which an offender obtained as a result of the hostage-taking comes into the custody of a Party, that Party must as soon as possible return it to the former hostage or the third party who the hostage-takers were trying to compel.

Preventive measures

31. *Article 4* requires Parties to take "all practicable measures" to prevent preparations for hostage-taking, in particular measures to prohibit the illegal activities of those who encourage, instigate, organise or engage in hostage-taking. This provision, built upon *Article 4* of the Diplomats Convention, leaves a large measure of discretion to Parties in determining what is practicable. It also requires Parties to exchange information and coordinate administrative measures to prevent the

¹⁰¹ See Lambert, pp. 313-4.

¹⁰² For a full discussion, see Lambert, pp.109-117.

commission of the offences. Such measures could include refusal to admit suspects into a Party's territory or other concerted efforts to monitor the international movement of suspects. Although it is not expressly referred to, undoubtedly the provision also entails the coordination of police efforts (including close cooperation with Interpol).

Disputes

32. *Article 16* is the standard provision in the conventions and makes provision for the settlement of any dispute concerning the interpretation or application of the Convention.¹⁰³ But under paragraph 2 a Party can declare on accession that it will not be bound by these provisions. The reservation can be withdrawn.

Reservations

33. In addition to a declaration under *Article 16(2)*, a Party can make a reservation regarding any other provision of the Convention, provided that it is not contrary to the object and purpose of the Convention.¹⁰⁴

Ratification, accession and succession

34. If a State did not sign the Convention by 31 December 1980, it cannot now do so and then ratify the Convention, but it can become a Party by depositing an instrument of accession with the United Nations Secretary-General (*Article 17(3)*). A State that has become independent may be able to succeed formally to the Convention.¹⁰⁵ A Party can denounce the Convention (*Article 19*).

Implementing legislation

35. Model Legislative Provisions are at page 160 below. However, careful consideration will have to be given by each State which is considering becoming a Party to the Convention as to its precise needs for the content of the legislation.

¹⁰³ See p. 10, para. 33 above.

¹⁰⁴ See page 11, 34 above.

¹⁰⁵ See further at p. 11, para. 35, above.

INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES 1979

THE STATES PARTIES TO THIS CONVENTION,

HAVING IN MIND the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of friendly relations and co-operation among States,

RECOGNISING in particular that everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

REAFFIRMING the principle of equal rights and self-determination of peoples as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, as well as in other relevant resolutions of the General Assembly.

CONSIDERING that the taking of hostages is an offence of grave concern to the international community and that, in accordance with the provisions of this Convention, any person committing an act of hostage taking shall either be prosecuted or extradited,

BEING CONVINCED that it is urgently necessary to develop international co-operation between States in devising and adopting effective measures for the prevention, prosecution and punishment of all acts of taking of hostages as manifestations of international terrorism,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organisation, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention.

2. Any person who:
- (a) attempts to commit an act of hostage-taking or
 - (b) participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking
- likewise commits an offence for the purposes of this Convention.

ARTICLE 2

Each State Party shall make the offences set forth in article 1 punishable by appropriate penalties which take into account the grave nature of those offences.

ARTICLE 3

1. The State Party in the territory of which the hostage is held by the offender shall take all measures it considers appropriate to ease the situation of the hostage, in particular, to secure his release and, after his release, to facilitate, when relevant, his departure. 2. If any object which the offender has obtained as a result of the taking of hostages comes into the custody of a State Party, that State Party shall return it as soon as possible to the hostage or the third party referred to in article 1, as the case may be, or to the appropriate authorities thereof.

ARTICLE 4

States Parties shall co-operate in the prevention of the offences set forth in article 1, particularly by:

- (a) taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organisations that encourage, instigate, organise or engage in the perpetration of acts of taking of hostages;
- (b) exchanging information and co-ordinating the taking of administrative and other measures as appropriate to prevent the commission of those offences.

ARTICLE 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over any of the offences set forth in article 1 which are committed:

- (a) in its territory or on board a ship or aircraft registered in that State;
- (b) by any of its nationals or, if that State considers it appropriate, by those stateless persons who have their habitual residence in its territory;
- (c) in order to compel that State to do or abstain from doing any act; or
- (d) with respect to a hostage who is a national of that State, if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 1 in cases where the alleged offender is present in its territory and it does not extradite him 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 internal law.

ARTICLE 6

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the alleged offender is present shall, in accordance with its laws, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted. That State Party shall immediately make a preliminary inquiry into the facts.

2. The custody or other measures referred to in paragraph 1 of this article shall be notified without delay directly or through the Secretary-General of the United Nations to:

- (a) the State where the offence was committed;
- (b) the State against which compulsion has been directed or attempted;
- (c) the State of which the natural or juridical person against whom compulsion has been directed or attempted is a national;
- (d) the State of which the hostage is a national or in the territory of which he has his habitual residence;
- (e) the State of which the alleged offender is a national or, if he is a stateless person, in the territory of which he has his habitual residence;
- (f) the international intergovernmental organisation against which compulsion has been directed or attempted;
- (g) all other States concerned.

3. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

- (a) to communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;
- (b) to be visited by a representative of that State.

4. The rights referred to in paragraph 3 of this article shall be exercised in conformity with the laws and regulations of the State in the territory of which the alleged offender is present subject; to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 of this article are intended.

5. The provisions of paragraphs 3 and 4 of this article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with paragraph 1(b) of article 5 to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. The State which makes the preliminary inquiry contemplated in paragraph 1 of this article shall promptly report its findings to the States or organisation referred to in paragraph 2 of this article and indicate whether it intends to exercise jurisdiction.

ARTICLE 7

The State Party where the alleged offender is prosecuted shall be accordance with its laws communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States concerned and the international intergovernmental organisations concerned.

ARTICLE 8

I. The State Party 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, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a grave nature under the law of that State.

2. Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 1 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which he is present.

ARTICLE 9

1. A request for the extradition of an alleged offender, pursuant to this Convention, shall not be granted if the requested State Party has substantial grounds for believing:

- (a) that the request for extradition for an offence set forth in article 1 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality, ethnic origin or political opinion; or
- (b) that the persons position may be prejudiced:
 - (i) for any of the reasons mentioned in subparagraph (a) of this paragraph, or
 - (ii) for the reason that communication with him by the appropriate authorities of the State entitled to exercise rights of protection cannot be effected.

2. With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

ARTICLE 10

1. The offences set forth in article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth in article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognise the offences set forth in article 1 as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. The offences set forth in article 1 shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 1 of article 5.

ARTICLE 11

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 1, including the supply of all evidence at their disposal necessary for the proceedings.

2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

ARTICLE 12

In so far as the Geneva Conventions of 1949 for the protection of war victims or the Additional Protocols to those Conventions are applicable to a particular act of hostage-taking, and in so far as States Parties to this Convention are bound under those conventions to prosecute or hand over the hostage-taker, the present Convention shall not apply to an act of hostage-taking committed in the course of armed conflicts as defined in the Geneva Conventions of 1949 and the Protocols thereto, including armed conflicts mentioned in article 1, paragraph 4, of Additional Protocol of 1977, in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

ARTICLE 13

This Convention shall not apply where the offence is committed within a single State, the hostage and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State.

ARTICLE 14

Nothing in this Convention shall be construed as justifying the violation of the territorial integrity or political independence of a State in contravention of the Charter of the United Nations.

ARTICLE 15

The provisions of this Convention shall not affect the application of the Treaties on Asylum, in force at the date of the adoption of this Convention, as between the States which are parties to those Treaties; but a State Party to this Convention may not invoke those Treaties with respect to another State Party to this Convention which is not a party to those Treaties.

ARTICLE 16

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by 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, anyone 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 paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.
3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

ARTICLE 17

1. This Convention is open for signature by all states until ... at United Nations Headquarters in New York.
2. This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. This Convention is open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE 18

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.
2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

ARTICLE 19

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

ARTICLE 20

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention, opened for signature at New York on ...

INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES
New York, 17 December 1979

Entry into force: 3 June 1983, in accordance with article 18(1).

Status: Signatories: 39, Parties: 110.

State	Signature	Ratification, Accession (a), Succession (d)
Albania		22 Jan 2002 a
Algeria		18 Dec 1996 a
Antigua and Barbuda		6 Aug 1986 a
Argentina		18 Sep 1991 a
Australia		21 May 1990 a
Austria	3 Oct 1980	22 Aug 1986
Azerbaijan		29 Feb 2000 a
Bahamas		4 Jun 1981 a
Barbados		9 Mar 1981 a
Belarus		1 Jul 1987 a
Belgium	3 Jan 1980	16 Apr 1999
Belize		14 Nov 2001 a
Bhutan		31 Aug 1981 a
Bolivia	25 Mar 1980	7 Jan 2002
Bosnia and Herzegovina		1 Sep 1993 d
Botswana		8 Sep 2000 a
Brazil		8 Mar 2000 a
Brunei Darussalam		18 Oct 1988 a
Bulgaria		10 Mar 1988 a
Cameroon		9 Mar 1988 a
Canada	18 Feb 1980	4 Dec 1985
Cape Verde		10 Sep 2002 a
Chile	3 Jan 1980	12 Nov 1981
China		26 Jan 1993 a
Côte d'Ivoire		22 Aug 1989 a
Cuba		15 Nov 2001 a
Cyprus		13 Sep 1991 a
Czech Republic		22 Feb 1993 d
Democratic People's Republic of Korea		12 Nov 2001 a
Democratic Republic of the Congo	2 Jul 1980	
Denmark		11 Aug 1987 a
Dominica		9 Sep 1986 a
Dominican Republic	12 Aug 1980	

Ecuador		2 May 1988 a
Egypt	18 Dec 1980	2 Oct 1981
El Salvador	10 Jun 1980	12 Feb 1981
Estonia		8 Mar 2002 a
Finland	29 Oct 1980	14 Apr 1983
France		9 Jun 2000 a
Gabon	29 Feb 1980	
Germany	18 Dec 1979	15 Dec 1980
Ghana		10 Nov 1987 a
Greece	18 Mar 1980	18 Jun 1987
Grenada		10 Dec 1990 a
Guatemala	30 Apr 1980	11 Mar 1983
Haiti	21 Apr 1980	17 May 1989
Honduras	11 Jun 1980	1 Jun 1981
Hungary		2 Sep 1987 a
Iceland		6 Jul 1981 a
India		7 Sep 1994 a
Iraq	14 Oct 1980	
Israel	19 Nov 1980	
Italy	18 Apr 1980	20 Mar 1986
Jamaica	27 Feb 1980	
Japan	22 Dec 1980	8 Jun 1987
Jordan		19 Feb 1986 a
Kazakhstan		21 Feb 1996 a
Kenya		8 Dec 1981 a
Kuwait		6 Feb 1989 a
Lao People's Democratic Republic		22 Aug 2002 a
Lebanon		4 Dec 1997 a
Lesotho	17 Apr 1980	5 Nov 1980
Liberia	30 Jan 1980	
Libyan Arab Jamahiriya		25 Sep 2000 a
Liechtenstein		28 Nov 1994 a
Lithuania		2 Feb 2001 a
Luxembourg	18 Dec 1979	29 Apr 1991
Malawi		17 Mar 1986 a
Mali		8 Feb 1990 a
Malta		11 Nov 2001 a
Mauritania		13 Mar 1998 a
Mauritius	18 Jun 1980	17 Oct 1980
Mexico		28 Apr 1987 a
Monaco		16 Oct 2001 a

Mongolia		9 Jun 1992 a
Nepal		9 Mar 1990 a
Netherlands	18 Dec 1980	6 Dec 1988
New Zealand	24 Dec 1980	12 Nov 1985
Norway	18 Dec 1980	2 Jul 1981
Oman		22 Jul 1988 a
Pakistan		8 Sep 2000 a
Palau		14 Nov 2001 a
Panama	24 Jan 1980	19 Aug 1982
Peru		6 Jul 2001 a
Philippines	2 May 1980	14 Oct 1980
Poland		25 May 2000 a
Portugal	16 Jun 1980	6 Jul 1984
Republic of Korea		4 May 1983 a
Romania		17 May 1990 a
Russian Federation		11 Jun 1987 a
Rwanda		13 May 2002 a
Saint Kitts and Nevis		17 Jan 1991 a
Saint Vincent and the Grenadines		12 Sep 2000 a
Saudi Arabia		8 Jan 1991 a
Senegal	2 Jun 1980	10 Mar 1987
Slovakia		28 May 1993 d
Slovenia		6 Jul 1992 d
Spain		26 Mar 1984 a
Sri Lanka		8 Sep 2000 a
Sudan		19 Jun 1990 a
Suriname	30 Jul 1980	5 Nov 1981
Sweden	25 Feb 1980	15 Jan 1981
Switzerland	18 Jul 1980	5 Mar 1985
Tajikistan		6 May 2002 a
The Former Yugoslav Republic of Macedonia		12 Mar 1998 d
Togo	8 Jul 1980	25 Jul 1986
Trinidad and Tobago		1 Apr 1981 a
Tunisia		18 Jun 1997 a
Turkey		15 Aug 1989 a
Turkmenistan		25 Jun 1999 a
Uganda	10 Nov 1980	
Ukraine		19 Jun 1987 a
United Kingdom of Great Britain and Northern Ireland	18 Dec 1979	22 Dec 1982

United States of America	21 Dec 1979	7 Dec 1984
Uzbekistan		19 Jan 1998 a
Venezuela		13 Dec 1988 a
Yemen		14 Jul 2000 a
Yugoslavia		12 Mar 2001 d

MODEL LEGISLATIVE PROVISIONS FOR THE IMPLEMENTATION OF THE CONVENTION AGAINST THE TAKING OF HOSTAGES

NOTE

No specific penalties for the offences have been included because of the variation in sentencing practice between states. However the Convention requires penalties that reflect the seriousness of the offence and therefore maximum penalties should be set including, if appropriate, a life sentence.

Whereas the International Convention against the Taking of Hostages was adopted by the General Assembly of the United Nations on December 17, 1979:

And Whereas (name of country) intends acceding to the said Convention by depositing an instrument of accession with the Secretary General of the United Nations:

And Whereas it is necessary to make legal provision to give effect to(name of country) obligations under the said Convention:

Now therefore, be it enacted by the Parliament of (name of country) as follows:-

Short title and date of operation

1. This Act may be cited as the Crimes (Taking of Hostages) Act, and shall come into operation on such date as the Minister (responsible for Foreign Affairs) certifies, by Order published in the Gazette, as the date on which the Convention enters into force in respect of (name of country).

Interpretation

2. In this Act , unless the context otherwise requires –

“the Convention” means the International Convention against the Taking of Hostages adopted by the General Assembly of the United Nations on December 17, 1979;

“Convention State” means a State declared by the Minister (responsible for Foreign Affairs), by Order published in the Gazette, to be a party to the Convention.

Offences

3. (1) Every person who-

(a) seizes and detains another person (hereinafter referred to as “the hostage”); and

- (b) threatens to kill, injure or continue to detain the hostage, unless a third party, whether such third party is a State, an international inter governmental organisation, a natural or juridical person or a group of persons, does or abstains from doing any act as an explicit or implicit condition for the release of the hostage,

commits an offence and upon conviction shall be liable to imprisonment for a term of () years.

- (2) Every person who

- (a) attempts to commit,
(b) participates as an accomplice of a person committing, or attempting to commit,

an offence under subsection (1) commits an offence and upon conviction shall be liable to imprisonment for a term of () years.

Jurisdiction

NOTE

The Convention contains a “prosecute or extradite” obligation with respect to the offences. In order to meet this requirement, a State must have the jurisdiction to prosecute an offence where the person is present on that State’s territory, regardless of the fact that no basis of jurisdiction set out in 4 (2) (a) – (e) exists. In order to meet this obligation, the State needs to have jurisdiction arising from the person’s presence in that state. One way to incorporate that jurisdiction is through a universal jurisdiction clause based on the presence of the person. This has been reflected in subsection 4(2) (f). If that is considered overly broad, the bracketed and italicized language at the end of 4(2) (f) can be added limiting the application of the section to cases where extradition is not possible. While this second approach is more limited in scope, there may be problems of proof arising from the need to establish that extradition is not possible.

4. (1) All offences under this Act shall be tried by the High Court (highest court exercising original criminal jurisdiction).
- (2) The High Court shall have jurisdiction to try an offence under section 3 in every case where the act constituting the offence –
- (a) is committed in (name of country);
(b) is committed on board a ship or aircraft registered in (name of country);
(c) is committed by a national of (name of country) or a stateless person having his or her habitual residence in (name of country), whether the act constituting the offence is committed in or outside (name of country);
(d) is committed in order to compel the Government of (name of country) to do or abstain from doing any act, whether the act

- constituting the offence is committed in or outside (name of country);
- (e) is committed with respect to a hostage who is a national of (name of country), whether the act constituting the offence is committed in or outside (name of country);
- (f) is committed by a person who is, after the commission of the act, present in (name of country), whether the act constituting the offence is committed in or outside (name of country) *[and he or she cannot be extradited to a foreign state having jurisdiction over the offence.]*

NOTE

Sub-section (3) below applies only to countries that have ratified and implemented the Geneva Convention and the Additional Protocols.

- (3) Where an act which constitutes an offence under section 3 also constitutes an act of hostage taking committed in the course of an armed conflict as defined in the Geneva Convention of 1949, for the protection of war victims, or the Additional Protocols thereto (including an armed conflict mentioned in Article 1(4) of the Additional Protocol of 1977), proceedings shall be instituted against the person committing such an act for a breach of the Geneva Convention or the Additional Protocols thereto and not for an offence under Section 3.

Extradition

5. (1) The offences described in section 3 shall be deemed to be extraditable offences under the Extradition Act and accordingly, the provisions of that Act shall apply to, and in relation to, extradition in respect of those offences.
- (2) Where there is an extradition arrangement between the Government of (name of country) and a Convention State in force on the date on which this Act comes into operation, such arrangement shall, for the purposes of the Extradition Act, be deemed to include provision for extradition in respect of the offences described in section 3.
- (3) Where there is no extradition arrangement between the Government of (name of country) and a Convention State, the Minister of (Foreign Affairs) may, by Order published in the Gazette, treat the Convention for the purposes of the Extradition Act, as an extradition arrangement between the Government of (name of country) and that Convention State providing for extradition in respect of the offences described in Section 3.
- (4) Where the Government of (name of country) accedes to a request by a Convention State for the extradition of any person accused of an offence described in Section 3, the act constituting such offence shall, for the purposes of the Extradition Act, be deemed to have been committed not only

in the place where it was committed but also within the jurisdiction of the requesting Convention State.

NOTE

Sub-section (5) below need not be included if such a ground of refusal is applicable already under general extradition legislation.

- (5) A request by a Convention State for the extradition of a person accused of an offence described in section 3 shall be refused if there are substantial grounds to believe that -
- (a) the request for extradition has been made for the purpose of prosecuting or punishing such person on account of his or her religion, nationality, ethnic origin or political opinion; or
 - (b) that person's position may be prejudiced-
 - (i) for any of the reasons referred to in paragraph (a) of this subsection; or
- for the reason that communication with him or her by the appropriate authorities of the State entitled to exercise rights of prosecution over him or her cannot be effected.

CHAPTER EIGHT

CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL 1979

(‘Nuclear Convention’)

1. The purpose of the Convention is set out in the preamble – to avert the potential dangers posed by the unlawful taking and use of nuclear material by the adoption of effective measures to prevent, detect and punish such offences. Articles 2 to 6 contain the measures; *Articles 7 to 14* contain *penal* provisions and are based closely on the Diplomats Convention.

2. Although it is short, the Convention was negotiated with some difficulty over a period of two years.¹⁰⁶ It was adopted on 26 October 1979 and entered into force on 8 February 1987. As of September 2002 it had 74 Parties, including 11 Commonwealth States. Although most Commonwealth States may not manufacture nuclear material, they may well have it in their territory, and it is important that all States should be able to control effectively the possession, transport and use, as well as manufacture, of nuclear material. The text of the Convention is at page 170 below. The complete list of signatures, ratifications, accessions and succession, is at page 179 below.

Scope of the Convention

3. The Convention does not apply to nuclear material used for military purposes since it is - or at least should be - already subject to strict regulation: see the eighth preambular paragraph, and *Article 2(1)* which limits the Convention to nuclear material ‘used for peaceful purposes’. ‘*Nuclear material*’ is defined in *Article 1(a) and (b)*.

4. *Article 2(1)* applies the provisions of the Convention to ‘*international nuclear transport*’. This is defined in *Article 1(c)* as ‘the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the State where the shipment originates beginning with the departure from a facility of the shipper in that State and ending with the arrival at a facility of the receiver within the State of ultimate destination’. However, *Article 2(2)* provides that the Convention also applies to nuclear material ‘used for peaceful purposes’ in *domestic* use, storage or transport, with the exception of *Articles 3, 4 and 5(3)*. Thus in domestic matters it is mainly the penal provisions that apply.

5. These limitations on the scope of the Convention might be partly remedied by a comprehensive treaty on nuclear terrorism. The negotiation of such a treaty has not yet been concluded, and may never be because of the reluctance of some States to consider an exemption for the activities of the armed forces of nuclear weapon States.¹⁰⁷

¹⁰⁶ The negotiating documents were published by the IAEA in 1982 in Legal Series No. 12, but this does not provide a clear guide to the interpretation of the Convention.

¹⁰⁷ See p. 242, paras. 4-5, below regarding such an exemption in the Bombings Convention.

Protection of nuclear material in international nuclear transport

6. *Article 3* requires each Party to take steps, within the framework of its domestic law and consistent with international law, to ensure that, during international nuclear transport, nuclear material in its territory, or on board a ship or aircraft ‘under its jurisdiction’ insofar as such ship or aircraft is engaged in the transport to or from that State,’ is protected at the levels described in *Annex 1*.¹⁰⁸ The meaning of the quoted words is not blindingly obvious. In contrast to the other terrorist conventions, the article does not speak of ships and aircraft ‘registered’ in the State, as in *Article 8(3)*, but ‘under its jurisdiction’, though adds the condition that a Party must act consistently with international law. This seems to indicate that, for the purposes of the Convention, a Party can in certain circumstances assert jurisdiction over foreign-registered ships and aircraft. By their nature, ships and aircraft move in areas beyond the territory of any State, such as on the high seas and in the airspace above the high seas. Even when they are in the territory of a State, jurisdiction over ships varies depending on the circumstances, and jurisdiction may be either with the State of registration or with the territorial State, or indeed shared when, for instance, a foreign-registered ship is in another State’s territorial sea or exclusive economic zone (EEZ).¹⁰⁹ It is therefore likely that the quoted words should be read as including not only ships and aircraft registered in the territory of the Party, but also foreign-registered ships and aircraft engaged in international nuclear transport to or from the territory of that Party in circumstances where, in accordance with international law, that Party would be entitled to assert its jurisdiction in the interests of its security as well as the protection of other States. For example, if a foreign-registered ship is carrying nuclear material from another Party’s territory, while it is in that Party’s territorial sea or EEZ that Party can exercise jurisdiction over the ship to ensure that the nuclear material is protected as required by Annex 1 to the Convention.

7. In *Article 4* paragraph 1 has provisions designed to ensure that nuclear material is not exported unless the Party exporting or authorising the export of the nuclear material has received assurances that during international nuclear transport it will be protected at the levels described in Annex 1; and paragraph 4 requires each Party to apply the same protection when nuclear material is transported from one part of its territory to another part of it through international waters or airspace (e.g. from the mainland United States to Hawaii).

8. Paragraph 2 requires a Party to ensure that nuclear material is not imported into its territory from a *non-Party* without an assurance that during international nuclear transport it will be protected at the levels described in Annex 1. Similarly, paragraph 3 requires a Party to prohibit transit of nuclear material through its territory by land or waterways (but not by air), or via its airports or seaports, if the transit is *between non-Parties*, unless the Party receives, as far as practicable, assurances that it will be protected at the levels described in Annex 1. The Law of

¹⁰⁸ Annex I has different levels of physical protection of nuclear material depending on whether it is (1) ‘in storage incidental to’ international nuclear transport or (2) in international transport. Annex II divides each type of nuclear material (Plutonium, Uranium-235, Uranium-233 and irradiated fuel) into three categories. Not all the provisions are mandatory, some recommend best practice. The technical details in the Annexes are outside the scope of this commentary.

¹⁰⁹ For an explanation of these terms, see p. 187, note 7, below.

Treaties does not allow parties to a treaty to impose obligations on States which are not parties.¹¹⁰ However, the obligations in paragraph 3 rest only on the Parties and can be discharged by them in exercise of their territorial sovereignty in the interests of national security.

Notifications etc.

9. *Articles 5 and 6* provide for notifications, information exchange, co-operation and protection of confidentiality.

Offences

10. *Article 7* defines the offences as:

- (a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property;
- (b) a theft or robbery of nuclear material;
- (c) an embezzlement or fraudulent obtaining of nuclear material;
- (d) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;
- (e) a threat:
 - (i) to use nuclear material to cause death or serious injury to any person or substantial property damage, or
 - (ii) to commit an offence described in paragraph (b) in order to compel a natural or legal person, international organisation or State to do or to refrain from doing any act;
- (f) an attempt to commit any offence described in paragraphs (a), (b) or (c); and
- (g) an act which constitutes participation in any offence described in paragraphs (a) to (f).

The commission of the acts must be committed intentionally, but, apart perhaps from threats under paragraph 1(e)(ii), motive may be irrelevant. The offences therefore embrace ordinary criminal acts, not just those with a terrorist purpose.

11. Proof of the offence under paragraph 1(a) requires evidence that the unlawful act caused or ‘is likely to cause’ death or serious injury or substantial damage to property. This phrase quoted would seem to need proof that, in the light of all the circumstances (amount of material, lack of sufficient protection etc.), there are reasonable grounds for believing that the unlawful act could have caused such injury or damage.

12. To be a threat for the purposes of paragraph 1(e)(ii) it must be a threat to commit a theft or robbery of nuclear material ‘in order to compel a natural or legal person, international organisation or State to do or refrain from doing any act’. This formula is the same in substance as *Article 1(1)* of the Hostages Convention.

¹¹⁰ A. Aust, *Modern Treaty Law and Practice*, (Cambridge, 2000) pp. 207-211.

Ancillary offences

13. *Article 7(1)(f)* is the usual provision to cover attempts. Paragraph 1(g) however, provides that ‘participation’ in any of the offences, including an attempt, shall be made punishable by each Party under its national law. Although it does not, as in the Diplomats Convention, refer to participation ‘as an accomplice’ that is probably implicit. Moreover, the reference to national law gives latitude to each Party to adopt a broad interpretation of ‘participation’, to include for example conspiracy.¹¹¹

14. As with the other conventions (apart from Tokyo and Explosives), each Party must make the offences punishable by appropriate penalties which take into account their ‘grave nature’ (paragraph 2). In practice this means a maximum of life imprisonment.

Establishment of Jurisdiction

15. *Article 8* follows *Article 3* of the Diplomats Convention. Paragraph 1 requires each Party to establish its jurisdiction over the offences when (a) they are committed in its territory or on board a ship or aircraft registered with that Party; or (b) when the alleged offender is one of its nationals. Paragraph 2 requires each Party to establish its jurisdiction where the alleged offender is present in its territory and it does not extradite to any of the Parties mentioned in paragraph 1. This provision is necessary in order to implement the *aut dedere aut judicare* rule in *Article 10*. Paragraph 3 is the standard provision confirming that, in addition to the jurisdiction authorised by the Convention, criminal jurisdiction can also be exercised in accordance with domestic law, provided of course that it is in conformity with customary international law.

16. Paragraph 4 authorises, but does not require, a Party which is not the Party in whose territory the offence was committed, nor the Party of the alleged offender’s nationality, to establish its jurisdiction over the offences when it is involved in international nuclear transport as the exporting or importing State. The jurisdiction must be done consistent with international law. [In other words, a Party may establish its jurisdiction over nationals (including legal persons) of other Parties or even of non-Parties when, for example, the Party is exporting nuclear material to another Party using a vessel of another Party or even a non-Party. Although such assertion of jurisdiction must go no further than international law permits, in such a case jurisdiction over nationals of another Party or of a non-Party is justified by the generally accepted need for stringent controls over nuclear material, wherever it is. However, before asserting such jurisdiction a Party needs to consider whether it will be able to enforce it effectively.]

Exercise of jurisdiction

17. *Article 9* follows *Article 6(1)* of the Diplomats Convention. It provides that when an alleged offender is in the territory of a Party, it must, ‘upon being satisfied that the circumstances so warrant’ take appropriate measures, including detention, under its national law to ensure presence of the person for the purpose of prosecution or extradition. The last sentence requires that certain States be notified, but in this respect, is less prescriptive than *Article 6(1)* of the Diplomats Convention.

¹¹¹ See p. 5, para. 14, above.

Aut dedere aut judicare

18. *Article 10* is the most important (penal) part of this and the other conventions. It embodies the principle that alleged offenders cannot escape justice. When an alleged offender is found in the territory of a Party it must either extradite or ‘without exception whatsoever submit the case to its competent authorities for the purpose of prosecution’.¹¹²

Extradition

19. *Article 11* is the standard provision.¹¹³

Fair treatment

20. *Article 12* requires that a person against whom prosecution or extradition proceedings are being carried out shall be guaranteed fair treatment at all stages. These rights are elaborated in bilateral and multilateral treaties on consular relations, such as the Vienna Convention on Consular Relations 1963,¹¹⁴ and in various universal human rights treaties, such as the International Covenant on Civil and Political Rights 1966,¹¹⁵ and in regional human rights treaties.

Assistance

21. *Article 13* follows generally the Diplomats Convention in requiring Parties to assist each other with criminal proceedings (which would include pre-trial proceedings), including supplying evidence. The obligation does not affect any obligations under mutual legal assistance treaties. This, and the other requirements for co-operation, are inevitably subject to the domestic law and procedure of the Parties, and to what is practicable.

Information

22. *Article 14(1) and (2)* requires Parties to communicate certain information to the depositary of the Convention (the Director-General of the IAEA) and other Parties, including the final outcome of any legal proceedings. Paragraph 3 makes it clear that a Party does not have to provide information about criminal proceedings arising out of such an offence when the circumstances are purely domestic.

The Annexes

23. *Article 15* provides that the two annexes are an integral part of the Convention.

Review and amendment

24. *Article 16* provides for the possibility of periodic reviews of the Convention. *Article 20* has a built-in amendment procedure for the Convention. It is possible that a conference may be convened this year 2002 to consider amendments to strengthen the Convention.

Disputes

25. *Article 17* is in substance very similar to the disputes clause of the other conventions in that it provides, in effect, a compulsory mechanism for the settlement

¹¹² For details, see p. 8, para. 22, above.

¹¹³ For details, see p. 8, paras. 24-30, above.

¹¹⁴ 596 UNTS 261 (Reg. No. 8638); UKTS (1973) 14.

¹¹⁵ 999 UNTS 171 (Reg. No. 14668); ILM (1967), p. 1465; UKTS (1977) 6.

of disputes.¹¹⁶ Under paragraph 3 a Party can on becoming a Party declare that it will not be bound by the compulsory mechanism. This reservation can be withdrawn.

Reservations

26. The Convention is silent as to whether reservations can be made, apart from those to *Article 17*. But since it does not say that the reservation permitted by *Article 17* is the only one allowed, a Party can make reservations to other provisions of the Convention provided they are not contrary to its object and purpose.¹¹⁷ Few reservations have been made. Pakistan maintains a reservation to the effect that it does not consider itself bound by *Article 2(2)* regarding nuclear material in domestic use, storage or transport, and this has been objected to by 17 Parties.

Accession or succession

27. If a State did not sign the Convention before 8 February 1987, it cannot do so now and then ratify the Convention, but no Commonwealth State which did sign later failed to ratify. Now a State can become a Party by depositing an instrument of accession with the IAEA Director-General (*Article 18(4) and (5)*). A State that has become independent may be able to succeed formally to the Convention.¹¹⁸ The Convention can be denounced (*Article 21*).

Implementing legislation

28. Model Legislative Provisions are at page 182 below. However, careful consideration will have to be given by each State which is considering becoming a Party to the Convention as to its precise needs for the content of the legislation.

¹¹⁶ See p. 10, para. 33, above.

¹¹⁷ See p. 11, para 34.

¹¹⁸ See p. 11, para. 35, above.

**CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR
MATERIAL**

Signed at New York and Vienna, 3 March 1980

THE STATES PARTIES TO THIS CONVENTION,

RECOGNIZING the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy,

CONVINCED of the need for facilitating international co-operation in the peaceful application of nuclear energy,

DESIRING to avert the potential dangers posed by the unlawful taking and use of nuclear material.

CONVINCED that offences relating to nuclear material are a matter of grave concern and that there is an urgent need to adopt appropriate and effective measures to ensure the prevention, detection and punishment of such offences,

AWARE OF THE NEED for international co-operation to establish, in conformity with the national law of each State Party and with this Convention, effective measures for the physical protection of nuclear material,

CONVINCED that this Convention should facilitate the safe transfer of nuclear material.

STRESSING also the importance of the physical protection of nuclear material in domestic use, storage and transport,

RECOGNIZING the importance of effective physical protection of nuclear material used for military purposes, and understanding that such material is and will continue to be accorded stringent physical protection.

HAVE AGREED AS FOLLOWS:

ARTICLE 1

For the purposes of this Convention:

- (a) "nuclear material" means plutonium except that with isotopic concentration exceeding 80% in plutonium-238; uranium-233; uranium enriched in the isotopes 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; any material containing one or more of the foregoing;
- (b) "uranium enriched in the isotope 235 or 233" means uranium containing the isotopes 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;
- (c) "international nuclear transport" means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the State where the shipment originates beginning with the

departure from a facility of the shipper in that State and ending with the arrival at a facility of the receiver within the State of ultimate destination.

ARTICLE 2

1. This Convention shall apply to nuclear material used for peaceful purposes while in international nuclear transport.
2. With the exception of articles 3 and 4 and paragraph 3 of article 5, this Convention shall also apply to nuclear material used for peaceful purposes while in domestic use, storage and transport.
3. Apart from the commitments expressly undertaken by States Parties in the articles covered by paragraph 2 with respect to nuclear material used for peaceful purposes while in domestic use, storage and transport, nothing in this Convention shall be interpreted as affecting the sovereign rights of a State regarding the domestic use, storage and transport of such nuclear material.

ARTICLE 3

Each State Party shall take appropriate steps within the framework of its national law and consistent with international law to ensure as far as practicable that, during international nuclear transport, nuclear material within its territory, or on board a ship or aircraft under its jurisdiction insofar as such ship or aircraft is engaged in the transport to or from that State, is protected at the levels described in Annex 1.

ARTICLE 4

1. Each State Party shall not export or authorize the export of nuclear material unless the State Party has received assurances that such material will be protected during the international nuclear transport at the levels described in Annex 1.
2. Each State Party shall not import or authorize the import of nuclear material from a State not party to this Convention unless the State Party has received assurances that such material will during the international nuclear transport be protected at the levels described in Annex 1.
3. A State Party shall not allow the transit of its territory by land or internal waterways or through its airports or seaports of nuclear material between States that are not parties to this Convention unless the State Party has received assurances as far as practicable that this nuclear material will be protected during international nuclear transport at the levels described in Annex 1.
4. Each State Party shall apply within the framework of its national law the levels of physical protection described in Annex I to nuclear material being transported from a part of that State to another part of the same State through international waters or airspace.
5. The State Party responsible for receiving assurances that the nuclear material will be protected at the levels described in Annex I according to paragraphs 1 to 3 shall identify and inform in advance States which the nuclear material is expected to transit by land or internal waterways, or whose airports or seaports it is expected to enter.
6. The responsibility for obtaining assurances referred to in paragraph 1 may be transferred, by mutual agreement, to the State Party involved in the transport as the importing State.
7. Nothing in this article shall be interpreted as in any way affecting the territorial sovereignty and jurisdiction of a State, including that over its airspace and territorial sea.

ARTICLE 5

1. States Parties shall identify and make known to each other directly or through the International Atomic Energy Agency their central authority and point of contact having responsibility for physical protection of nuclear material and for co-ordinating recovery and response operations in the event of any unauthorized removal, use or alteration of nuclear material or in the event of credible threat thereof.

2. In the case of theft, robbery or any other unlawful taking of nuclear material or of credible threat thereof, States Parties shall, in accordance with their national law, provide co-operation and assistance to the maximum feasible extent in the recovery and protection of such material to any State that so requests. In particular:

- (a) each State Party shall take appropriate steps to inform as soon as possible other States, which appear to it to be concerned, of any theft, robbery or other unlawful taking of nuclear material or credible threat thereof and to inform, where appropriate, international organizations;
- (b) as appropriate, the States Parties concerned shall exchange information with each other or international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container, or recovering unlawfully taken nuclear material and shall:
 - i. co-ordinate their efforts through diplomatic and other agreed channels;
 - ii. render assistance, if requested;
 - iii. ensure the return of nuclear material stolen or missing as a consequence of the above-mentioned events. The means of implementation of this co-operation shall be determined by the States Parties concerned.

3. States Parties shall co-operate and consult as appropriate, with each other directly or through international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material in international transport.

ARTICLE 6

1. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.

2. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material.

ARTICLE 7

1. The intentional commission of:

- (a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property;
- (b) a theft or robbery of nuclear material;
- (c) an embezzlement or fraudulent obtaining of nuclear material;

- (d) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;
 - (e) a threat:
 - i. to use nuclear material to cause death or serious injury to any person or substantial property damage, or
 - ii. to commit an offence described in sub-paragraph (b) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;
 - (f) an attempt to commit any offence described in paragraphs (a), (b) or (c); and
 - (g) an act which constitutes participation in any offence described in paragraphs (a) to (f) shall be made a punishable offence by each State Party under its national law.
2. Each State Party shall make the offences described in this article punishable by appropriate penalties which take into account their grave nature.

ARTICLE 8

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 7 in the following cases:
 - (a) when the offence is committed in the territory of that State or on board a ship or aircraft registered in that State;
 - (b) when the alleged offender is a national of that State.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these offences in cases where the alleged offender is present in its territory and it does not extradite him pursuant to article 11 to any of the States mentioned in paragraph 1.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.
4. In addition to the States Parties mentioned in paragraphs I and 2, each State Party may, consistent with international law, establish its jurisdiction over the offences set forth in article 7 when it is involved in international nuclear transport as the exporting or importing State.

ARTICLE 9

Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take appropriate measures, including detention, under its national law to ensure his presence for the purpose of prosecution or extradition. Measures taken according to this article shall be notified without delay to the States required to establish jurisdiction pursuant to article 8 and, where appropriate, all other States concerned.

ARTICLE 10

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

ARTICLE 11

1. The offences in article 7 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties

undertake to include those offences as extraditable offences in every future extradition treaty to be concluded between them.

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

States Parties which do not make extradition conditional on the existence of a treaty shall recognize those offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

3. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with paragraph I of article 8.

ARTICLE 12

Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 7 shall be guaranteed fair treatment at all stages of the proceedings.

ARTICLE 13

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 7, including the supply of evidence at their disposal necessary for the proceedings. The law of the State requested shall apply in all cases.

2. The provisions of paragraph I 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 14

1. Each State Party shall inform the depositary of its laws and regulations which give effect to this Convention. The depositary shall communicate such information periodically to all States Parties.

2. The State Party where an alleged offender is prosecuted shall, wherever practicable, first communicate the final outcome of the proceedings to the States directly concerned. The State Party shall also communicate the final outcome to the depositary who shall inform all States.

3. Where an offence involves nuclear material used for peaceful purposes in domestic use, storage or transport, and both the alleged offender and the nuclear material remain in the territory of the State Party in which the offence was committed, nothing in this Convention shall be interpreted as requiring that State Party to provide information concerning criminal proceeding arising out of such an offence.

ARTICLE 15

The Annexes constitute an integral part of this Convention

ARTICLE 16

1. A conference of States Parties shall be convened by the depositary five years after the entry into force of this Convention to review the implementation of the

Convention and its adequacy as concerns the preamble, the whole of the operative part and the annexes in the light of the then prevailing situation.

2. At intervals of not less than five years thereafter, the majority of States Parties may obtain, by submitting a proposal to this effect to the depositary, the convening of further conferences with the same objective.

ARTICLE 17

1. In the event of a dispute between two or more States Parties concerning the interpretation or application of this Convention, such States Parties shall consult with a view to the settlement of the dispute by negotiation, or by any other peaceful means of settling disputes acceptable to all parties to the dispute.

2. Any dispute of this character which cannot be settled in the manner prescribed in paragraph 1 shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In case of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.

3. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2. The other States Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2, with respect to a State Party which has made a reservation to that procedure.

4. Any State Party which has made a reservation in accordance with paragraph 3 may at any time withdraw that reservation by notification to the depositary.

ARTICLE 18

1. This Convention shall be open for signature by all States at the Headquarters of the International Atomic Energy Agency in Vienna and at the Headquarters of the United Nations in New York from 3 March 1980 until its entry into force.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. After its entry into force, this Convention will be open for accession by all States.

4. (a) This Convention shall be open for signature or accession by international organizations and regional organizations of an integration or other nature, provided that any such organization is constituted by sovereign States and has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention.
- (b) In matters within their competence, such organizations shall, on their own behalf, exercise the rights and fulfill the responsibilities which this Convention attributes to States Parties.
- (c) When becoming party to this Convention such an organization shall communicate to the depositary a declaration indicating which States are members thereof and which articles of this Convention do not apply to it.

- (d) Such an organization shall not hold any vote additional to those of its Member States.
5. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

ARTICLE 19

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty first instrument of ratification, acceptance or approval with the depositary.
2. For each State ratifying, accepting, approving or acceding to the Convention after the date of deposit of the twenty first instrument of ratification, acceptance or approval, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

ARTICLE 20

1. Without prejudice to article 16 a State Party may propose amendments to this Convention. The proposed amendment shall be submitted to the depositary who shall circulate it immediately to all States Parties. If a majority of States Parties request the depositary to convene a conference to consider the proposed amendments, the depositary shall invite all States Parties to attend such a conference to begin not sooner than thirty days after the invitations are issued. Any amendment adopted at the conference by a two-thirds majority of all States Parties shall be promptly circulated by the depositary to all States Parties.
2. The amendment shall enter into force for each State Party that deposits its instrument of ratification, acceptance or approval of the amendment on the thirtieth day after the date on which two thirds of the States Parties have deposited their instruments of ratification, acceptance or approval with the depositary. Thereafter, the amendment shall enter into force for any other State Party on the day on which that State Party deposits its instrument of ratification, acceptance or approval of the amendment.

ARTICLE 21

1. Any State Party may denounce this Convention by written notification to the depositary.
2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the depositary.

ARTICLE 22

The depositary shall promptly notify all States of:

- (a) each signature of this Convention;
- (b) each deposit of an instrument of ratification, acceptance, approval or accession;
- (c) any reservation or withdrawal in accordance with article 17;
- (d) any communication made by an organization in accordance with paragraph 4(c) of article 18;
- (e) the entry into force of this Convention;
- (f) the entry into force of any amendment to this Convention; and
- (g) any denunciation made under article 21.

ARTICLE 23

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Convention, opened for signature at Vienna and at New York on 3 March 1980.

ANNEX I

Levels of Physical Protection to be Applied in International Transport of Nuclear Material as Categorized in Annex II

1. Levels of physical protection for nuclear material during storage incidental to international nuclear transport include:

- (a) For Category III materials, storage within an area to which access is controlled;
- (b) For Category II materials, storage within an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control or any area with an equivalent level of physical protection;
- (c) For Category I material, storage within a protected area as defined for Category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their object the detection and prevention of any assault, unauthorized access or unauthorized removal of material.

2. Levels of physical protection for nuclear material during international transport include:

- (a) For Category II and III materials, transportation shall take place under special precautions including prior arrangements among sender, receiver, and carrier, and prior agreement between natural or legal persons subject to the jurisdiction and regulation of exporting and importing States, specifying time, place and procedures for transferring transport responsibility;
- (b) For Category I materials, transportation shall take place under special precautions identified above for transportation of Category II and III materials, and in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces;
- (c) For natural uranium other than in the form of ore or ore-residue transportation protection for quantities exceeding 500 kilograms U shall include advance notification of shipment specifying mode of transport, expected time of arrival and confirmation of receipt of shipment.

ANNEX II

- a. All plutonium except that with isotopic concentration exceeding 80% in plutonium-238.
- b. Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 100 rads/hour at one metre unshielded.

- c. Quantities not falling in Category III and natural uranium should be protected in accordance with prudent management practice,
- d. Although this level of protection is recommended, it would be open to States, upon evaluation of the specific circumstances, to assign a different category of physical protection.
- e. Other fuel which by virtue of its original fissile material content is classified as Category I and II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 100 rads/hour at one metre unshielded.

Table: Categorization of Nuclear Material

Material	Form	Category		
		I	II	III ^{c/}
1. Plutonium ^{a/}	Unirradiated ^{b/}	2 kg or more	Less than 2 kg but more than 500 g	500 g or less but more than 15 g
2. Uranium-235	Unirradiated ^{b/} <ul style="list-style-type: none"> • uranium enriched to 20% ^{235}U or more • uranium enriched to 10% ^{235}U but less than 20% • uranium enriched above natural, but less than 10% ^{235}U 	5 kg or more	Less than 5 kg but more than 1 kg 10 kg or more	1 kg or less but more than 15 g Less than 10 kg but more than 1 kg 10 kg or more
3. Uranium-233	Unirradiated ^{b/}	2 kg or more	Less than 2 kg but more than 500 kg	500 g or less but more than 15 g
4. Irradiated fuel			Depleted or natural uranium, thorium or low-enriched fuel (less than 10% fissile content) ^{d/e/}	

**CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR
MATERIAL**

Entry into force: 8 February 1987

Status: 78 Parties

State	Signature	Ratification, Accession (a), Succession (d)
Albania		04 Apr 2002 a
Antigua and Barbuda		03 Sep 1993 a
Argentina	28 Feb 1986	06 May 1989 r
Armenia		23 Sep 1993 a
Australia	22 Feb 1984	22 Oct 1987 r
Austria	03 Mar 1980	21 Jan 1989 r
Belarus		14 Jun 1993 s
Belgium	13 Jun 1980	06 Oct 1991 r
Bolivia		23 Feb 2002 a
Bosnia and Herzegovina		01 Mar 1992 s
Botswana		19 Oct 2000 a
Brazil	15 May 1981	08 Feb 1987 r
Bulgaria	23 Jun 1981	08 Feb 1987 r
Canada	23 Sep 1980	08 Feb 1987 r
Chile		27 May 1994 a
China		09 Feb 1989 a
Croatia		08 Oct 1991 s
Cuba		26 Oct 1997 a
Cyprus		22 Aug 1998 a
Czech Republic		1 Jan 1993 s
Denmark	13 Jun 1980	06 Oct 1991 r
Dominican Republic	03 Mar 1980	
Ecuador	26 Jun 1986	16 Feb 1996 r
Estonia		08 Jun 1994 a
Finland	25 Jun 1981	22 Oct 1989 a
France	13 Jun 1980	06 Oct 1991 a
Germany	13 Jun 1980	06 Oct 1991 r
Greece	03 Mar 1980	06 Oct 1991 r
Grenada		08 Feb 2002 a
Guatemala	12 Mar 1980	08 Feb 1987 r
Haiti	09 Apr 1980	
Hungary	17 Jun 1980	08 Feb 1987 r
Iceland		18 Jul 2002 a

India		11 Apr 2002 a
Indonesia	03 Jul 1986	08 Feb 1987 r
Ireland	13 Jun 1980	06 Oct 1991 r
Israel	17 Jun 1983	21 Feb 2002 r
Italy	13 Jun 1980	06 Oct 1991 r
Japan		27 Nov 1988 a
Kenya		13 Mar 2002 a
Korea, Republic of	29 Dec 1981	08 Feb 1987 r
Lebanon		15 Jan 1998 a
Libyan Arab Jamahiriya		17 Nov 2000 a
Liechtenstein	13 Jan 1986	08 Feb 1987 r
Lithuania		06 Jan 1994 a
Luxembourg	13 Jun 1980	06 Oct 1991 r
Mali		06 Jun 2002 a
Mexico		04 May 1988 a
Monaco		08 Sep 1996 a
Mongolia	23 Jan 1986	08 Feb 1987 r
Morocco	25 Jul 1980	22 Sep 2002 r
Netherlands	13 Jun 1980	06 Oct 1991 a
Niger	07 Jan 1985	
Norway	26 Jan 1983	08 Feb 1987 r
Pakistan		12 Oct 2000 a
Panama	18 Mar 1980	01 May 1999 r
Paraguay	21 May 1980	08 Feb 1987 r
Peru		10 Feb 1995 a
Philippines	19 May 1980	08 Feb 1987 r
Poland	06 Aug 1980	08 Feb 1987 r
Portugal	19 Sep 1984	06 Oct 1991 r
Republic of Moldova		06 Jun 1998 a
Romania	15 Jan 1981	23 Dec 1993 r
Russian Federation	22 May 1980	08 Feb 1987 r
Slovakia		01 Jan 1993 s
Slovenia		25 Jun 1991 s
South Africa	18 May 1981	
Spain	07 Apr 1986	06 Oct 1991 r
Sudan		17 Jun 2000 a
Sweden	02 Jul 1980	08 Feb 1987 r
Switzerland	09 Jan 1987	08 Feb 1987 r
Tajikistan		10 Aug 1996 a
The Frmr. Yug.Rep.of Macedonia		17 Nov 1991 s
Trinidad and Tobago		25 May 2001 a

Tunisia		08 May 1993 a
Turkey	23 Aug 1983	08 Feb 1987 r
Ukraine		05 Aug 1993 a
United Kingdom	13 Jun 1980	06 Oct 1991 r
United States of America	03 Mar 1980	08 Feb 1987 r
Uzbekistan		11 Mar 1998 a
Yugoslavia	15 Jul 1980	27 Apr 1992 s
EURATOM	13 Jun 1980	06 Oct 1991 c

MODEL LEGISLATIVE PROVISIONS FOR THE IMPLEMENTATION OF THE CONVENTION FOR THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL

NOTE

No specific penalties for the offences have been included because of the variation in sentencing practice between states. However the Convention requires penalties that reflect the seriousness of the offence and therefore maximum penalties should be set including, if appropriate, a life sentence.

Whereas a Convention for the Physical Protection of Nuclear Material was adopted on October 28 1979:

And Whereas (name of country) intends acceding to the said Convention by depositing an instrument of accession with the Director General of the International Atomic Energy Authority:

And Whereas it is necessary to make legal provision to give effect to the obligations under the said Convention:

Now therefore, be it enacted by the Parliament of(name of country) as follows:-

Short title and date of operation

1. This Act may be cited as The Physical Protection of Nuclear Material Act, and shall come into operation on such date as the Minister (responsible for Foreign Affairs) certifies, by Order published in the Gazette, as the date on which the Convention enters into force in respect of (name of country).

Interpretation

2. In this Act unless the context otherwise requires -

“Convention” means the Convention for the Physical Protection of Nuclear Material adopted on October 28,1979;

“Convention State” means a State which is declared by the Minister (responsible for Foreign Affairs), by Order published in the Gazette, to be a party to the Convention;

“International Nuclear transport “ means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the State where the shipment originates beginning with the departure from a facility of the shipper in that State and ending with the arrival at a facility of the receiver within the State of ultimate destination;

“nuclear material “ means-

- (a) plutonium, except plutonium with an isotopic concentration of plutonium-238 exceeding eighty percentum;
- (b) uranium-233 ;
- (c) uranium containing uranium-233 or uranium-235 or both in such an amount that the abundance ratio of the sum of these isotopes to the isotope uranium-238 is greater than 0.72 percentum;
- (d) uranium with an isotopic concentration equal to that occurring in nature; and
- (e) any substance containing anything described in paragraphs (a) to (d),

but does not include uranium in the form of ore or ore –residue;

Restrictions on export, import and transport of nuclear material

- 3 (1) (a) No person shall import or export any nuclear material to or from (name of country), without a license or written permit issued by (designated authority)
- (b) No licence or written permit for import or export shall be granted under sub section 1(a) unless and until the (designated authority) has received a written assurance from the importer or exporter of such nuclear material, as the case may be, that such material will, during international nuclear transport, be protected at the appropriate levels described in Annex 1 to the Convention.
- (2) (a) No person shall transport any nuclear material –
 - (i) over the territory of (name of country), or
 - (ii) through any of its seaports or airports,

unless and until the person has received written permission from (designated authority)for transport.

- (b) No written permission shall be issued under sub section 2(a) unless the (designated authority) has received a written assurance from the person transporting such nuclear material that such material will, during international nuclear transport, be protected at the appropriate levels described in Annex 1 to the Convention.
- (3) (a) No person shall transport any nuclear material from one part of(name of country) to another part of (name of country), through international waters or airspace, without the written permission of (designated authority).
- (b) No written permission shall be issued under sub section 3(a) unless and until (designated authority) has received a written assurance from the person transporting such nuclear material that such material will, in the course of such transport, be protected at the appropriate levels described in Annex 1 to the Convention.
- (4) Every person who fails to comply with subsections (1), (2) or (3) commits an offence and on conviction shall be liable to imprisonment for a term not exceeding (...) years.

- (5) A person who makes a false statement or provides a false assurance to a (designated authority) under sub sections (1), (2) or (3) commits an offence and on conviction shall be liable to imprisonment for a term not exceeding () years.
- (6) The provisions of this section shall have effect despite anything to the contrary in any other law.

Offences

4. Every person who, intentionally and without lawful authority, does any act which constitutes, -
- (a) the receipt, possession, use, transfer, alteration, disposal, or dispersal of nuclear material, being in every such case an act that causes or is likely to cause death or serious injury to any person or substantial damage to property;
 - (b) a theft or robbery of nuclear material;
 - (c) an embezzlement or fraudulent obtaining of nuclear material;
 - (d) a demand for nuclear material by threat or use of force or any other form of intimidation; or
 - (e) a threat –
 - (i) to use nuclear material to cause death or serious injury to any person or substantial damage to any property;
 - (ii) to commit an offence described in paragraph (b) in order to compel a natural or legal person or international organisation or State to do or refrain from doing any act;
 - (f) an attempt to commit any offence described in paragraph (a), (b), or (c); or
 - (g) participation in the commission of any offence described in paragraph (a), (b), (c), (d), (e), or (f),
- commits an offence and upon conviction shall be liable to imprisonment for a term of () years.

Jurisdiction

NOTE

The Convention contains a “prosecute or extradite” obligation with respect to the offences in section 4 above. In order to meet this requirement, a State must have the jurisdiction to prosecute an offence where the person is present on that State’s territory, regardless of the fact that no basis of jurisdiction set out in 5 (2) (a) – (c) exists. In order to meet this obligation, the State needs to have jurisdiction arising from the person’s presence in that state. One way to incorporate that jurisdiction is through a universal jurisdiction clause based on the presence of the person. This has been reflected in sub section 5(2) (d). If that is considered overly broad, the bracketed and italicized language at the end of 5(2) (d) can be added limiting the application of the section to cases where extradition is not possible. While this second approach is more limited in scope, there may be problems of proof arising from the need to establish that extradition is not possible.

5. (1) All offences under this Act shall be tried by The High Court (the highest court exercising original criminal jurisdiction).

- (2) The High Court shall have jurisdiction to try an offence under section 4, in every case where the act constituting the offence-
- (a) is committed in (name of country) or on board, a ship or aircraft registered in (name of country);
 - (b) is committed by a national of (name of country), whether the act constituting the offence is committed within or outside (name of country);
 - (c) is committed during international nuclear transport to, or from (name of country);
 - (d) is committed by a person who is, after the commission of the act, present in (name of country), whether such act is committed within or outside (name of country), [and he or she cannot be extradited to a foreign state having jurisdiction over the offence.]

Extradition

6. (1) The offences described in section 4 shall be deemed to be included as extraditable offences under the Extradition Act, and accordingly, the provisions of that Act shall apply to, and in relation to, extradition in respect of those offences.
- (2) Where there is, on the date on which this Act comes into operation, an extradition arrangement in force between the Government of (name of country) and a Convention State, such arrangement shall, for the purposes of the Extradition Act, be deemed to include provision for extradition respect of the offences described in Section 4.
- (3) Where there is no extradition arrangement between the Government of (name of country) and a Convention State, the Minister (of Foreign Affairs) may, by Order published in the Gazette, treat the Convention, for the purposes of the Extradition Act, as an extradition arrangement between the Government of (name of country) and such Convention State providing for extradition in respect of the offences described in section 4.
- (4) Where the Government of (name of country) accedes to a request by a Convention State for the extradition of a person accused of an offence described in section 4, the act constituting such offence shall, for the purposes of the Extradition Act, be deemed to have been committed not only in the place where it was committed but also within the jurisdiction of the requesting Convention State.

CHAPTER NINE
CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS
AGAINST THE SAFETY OF MARITIME NAVIGATION 1988
(‘Rome Convention’)

1. The impetus for the Rome Convention was the seizure on 7 October 1985 of the Italian cruise ship *Achille Lauro* in international waters off the coast of Egypt by four members of the Palestine Liberation Front who were passengers on it. The other 400 passengers, many of them US nationals, and the crew were held hostage and an elderly wheelchair-bound American Jew was murdered. The terrorists sought the release of 50 Palestinians in prison in Israel. Instead of detaining the terrorists, the Government of Egypt, in return for the release of the ship and those on board, put the terrorists on an Egyptian civil aircraft bound for Tunis. But US fighter jets intercepted it in international airspace and forced it to land in Italy, where the four were convicted, though an accomplice was allowed to leave Italy. A US extradition request was refused.¹¹⁹

2. The Convention was adopted on 10 March 1988 at a conference in Rome convened by the International Maritime Organisation (IMO). A Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf was adopted the same day (see page 210 below).

3. The Convention entered into force on 1 March 1992. As of September 2002 it had 60 Parties, including 17 Commonwealth States. The text of the Convention is at page 194 below and the complete list of ratifications and accessions, is at page 203 below.

4. The Convention generally follows the Hostages Convention with respect to provisions common to the conventions.

Object and scope of the Convention

5. Article 1 defines for the purposes of the Convention a ‘ship’ to mean:

‘any type of vessel whatsoever not permanently attached to the sea-bed,¹²⁰ including dynamically supported craft, submersibles, or any other floating craft’.

This broad definition therefore includes mobile off-shore drilling platforms which are attached only temporarily to the sea-bed, hovercraft and hydrofoils (‘dynamically supported craft’), and submarines and rafts. The ship does not have to be registered with (fly the flag of) a Party.

6. Article 2(1) excludes from the Convention

¹¹⁹ For more details see the introduction to the detailed commentary on the Convention by one of the negotiators, G. Plant, in ICLQ (1990), pp. 27-56, and J. Lambert, *Terrorism and Hostages in International Law* (Cambridge, 1990), pp. 4, 26-7 and 115-6 (hereinafter, ‘Plant’ and ‘Lambert’).

¹²⁰ For such structures, see Chapter 10 on the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 1988, at p.210 below.

7. Any warship. A warship is defined in *Article 29* of the United Nations Convention on the Law of the Sea 1982 (UNCLOS)¹²¹ as ‘a ship belonging to the armed forces of a state bearing the external marks distinguishing such ships of its nationality, under command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline’. The ship does not have to be owned by the flag State (note use of the term ‘belonging’).

- (a) a ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes (including fisheries protection vessels). This means that icebreakers and research ships are not excluded
- (b) a ship which has been withdrawn from navigation (e.g. restaurant ships) or laid up (e.g. mothballed).

8. Paragraph 2 confirms, out of an abundance of caution, that nothing in the Convention affects the immunities (from enforcement jurisdiction) of warships and other government ships operated for non-commercial purposes. As with warships, government ships operated for non-commercial purposes enjoy state immunity.

9. The eleventh preambular paragraph states, no doubt for the avoidance of doubt, that acts of the crew which are subject to ‘normal shipboard discipline’ are outside the purview of the Convention. This does not affect the scope of the Convention. If terrorists join a ship as members of the crew, but for the purpose of taking it over, this would be more than mutiny and therefore not an act which could be dealt by disciplinary measures.

10. *Article 4(1)* is one of the more opaque texts to be found in any treaty.¹²² In essence it provides that the Convention applies only if there is an international element.¹²³ (The other conventions do not apply if all the elements are internal to the Party in whose territory the offence is committed.) The Convention thus applies to all navigation, actual or scheduled, except for *local* cabotage (in the internal waters of one State) or *short-range* cabotage¹²⁴ (in the territorial sea¹²⁵ of one State). In other words, the Convention does not apply if the ship is going from a point in internal waters (including a port) to another point in internal waters of the same State without leaving those waters or that State’s territorial sea. But even if the ship is engaged in local or short-range cabotage, the Convention will apply if an alleged

¹²¹ 1833 UNTS 3 (Reg. No. 31363); ILM (1982)1261; UKTS (1999) 82.

¹²² The main reasons are that it is dealing with a complex issues and was negotiated both by lawyers experienced in United Nations affairs and lawyers expert in IMO matters. In addition, the final text prepared by the IMO Secretariat was adopted by the Rome Conference without the lawyers being able to check it finally.

¹²³ See Plant, pp. 37-40.

¹²⁴ *Long-range* cabotage is between a State and an overseas territories (e.g. between Australia and Christmas Island).

¹²⁵ The sovereignty of a coastal State extends beyond its land territory to an adjacent belt of sea known as the territorial sea. The breath of the territorial sea can be up to 12 nautical miles. About six States claim between only 3 and 6 miles. Some fifteen States, mostly in Africa and Latin America, claim between 20 and 200 miles, but these are not recognised by States that claim 12 miles or less and are unlikely to stand up if challenged before an international tribunal.

offender is found in a State other than the one in which the cabotage took place (paragraph 2). In all cases, the ship can be flying the flag of any State.

11. What the Convention does not specify is how an attack on the high seas can be dealt with. This is left to general international law. On the high seas a ship is subject to the jurisdiction of the flag State, though it can consent to another State exercising jurisdiction, such as boarding the ship.¹²⁶ Another State may be able to take action against a foreign ship in exercise of its right of self-defence if the ship is a threat to that State, or to protect its nationals on board. (See also paragraph 29 below.)

Offences

12. As with most of the conventions, *Article 3* lists, in paragraph 1, acts which are offences if committed ‘unlawfully’ and ‘intentionally’. It is necessary in this context to include ‘unlawfully’ since there can be circumstances in which force, or the threat of force, may have to be used to carry out a lawful act, such as regaining control of a ship which has been taken over by terrorists.

13. The offences are:

- (a) seizing or exercising control over a ship (hijacking) by force or threat of force or other form of intimidation,
- (b) performing an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship,
- (c) destroying a ship or causing damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship,
- (d) placing or causing to place on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship,
- (e) destroying or seriously damaging maritime navigational facilities or seriously interfering with their operation, if any such act is likely to endanger the safe navigation of ship,
- (f) communicating information which he knows to be false, thereby endangering the safe navigation of the ship,
- (g) injuring or killing a person in connection with the commission or the attempted commission of any of the offences set forth in (a) to (f).

With the exception of (f), the offences require that the act is either likely to destroy the ship or is likely to endanger its safe navigation.

14. The offence must be carefully distinguished from piracy. That crime is defined in *Article 101* of the United Nations Convention on the Law of the Sea 1982 as ‘any illegal acts of violence or detention ... committed for *private ends* by the crew or the passengers of a *private ship or private aircraft*, and directed ... on the high seas, against *another ship ...*’. Thus if a ship is hijacked by some of the

¹²⁶ On 21 December 2000 the merchant ship *Nisha* was, with the consent of the flag State, S. Vincent and the Grenadines, boarded in international waters in the English Channel by Royal Naval forces to search it for suspected weapons of mass destruction. Fortunately, none were found.

passengers, it is not piracy.¹²⁷ But if it is made from a private ship, determining whether it is hijacking or piracy may not always be easy since the definition of the offences does not include motive. However, it would no doubt become clear if the purpose is purely mercenary, in which case it should be piracy.

15. Under Article 3(2)(a) and (b), to attempt or to abet an offence, or to be an accomplice, is itself an offence. Due to an obvious mistake, it does not provide for the offence of being an accomplice to an attempt, as the earlier and later conventions do. This omission may be rectified in implementing legislation.

16. Article 3(2)(c), which is unique among the conventions, provides - in more tortuous English - that it is also an offence for a person, in order to compel a physical or juridical person to do or refrain from doing any act, to threaten, with or without a condition (such as release of prisoners), that he will commit an offence under subparagraphs (1)(b), (c) or (e), provided the threat is likely to endanger the safe navigation of the ship. This would cover, for example, making threats to a government that unless it releases some prisoners the ship's radar would be destroyed. The obligation to make this an offence is qualified by the words 'as is provided for under national law'. This leaves it to each Party to decide whether or not to provide that the threat must be accompanied by a condition.¹²⁸ The offence in subparagraph (1)(e) covers also harming maritime navigation facilities which are not on the ship.

17. As with other conventions, each Party must make the offences punishable by appropriate penalties which take into account their 'grave nature' (*Article 5*). In practice this means a maximum of life imprisonment.

Establishment of jurisdiction

18. Article 6 follows Article 4 of the Hague Convention,¹²⁹ adapted as necessary. Paragraph 1 requires each Party to establish its jurisdiction over offences when they are committed (a) against or on board a ship flying the Party's flag at the time of the offence;¹³⁰ or (b) in its territory, including its territorial sea; or (c) by one of its nationals. The nationality of the victim is immaterial.

19. Paragraph 2 follows Article 8(4) of the Nuclear Convention in concept.¹³¹ It authorises, but does not require, each Party to establish its jurisdiction over an offence in three other circumstances, (a) when it is committed by a stateless person whose habitual residence is in its territory; (b) when one of its nationals was seized, threatened, injured or killed; or (c) when it was committed in an attempt to compel the Party to do or abstain from doing any act. This represents the 'passive personality' or 'protective' principle.¹³² A Party exercising this option is to notify the IMO Secretary-General.

¹²⁷ See also p. 45 above, and Plant, p. 43; R. Churchill and A. Lowe, *The Law of the Sea* (3rd ed., Manchester, 1999), pp. 209-11; M. Halberstam, 'Terrorism on the High Seas', *AJIL* (1988), p. 269, at pp. 272-291.

¹²⁸ Plant, p. 43.

¹²⁹ See pp. 49 and para. 16 above.

¹³⁰ It does not mean that the ship must have been *actually* flying it at the time.

¹³¹ See p. 167, para. 16 above.

¹³² See p. 3, para. 7 above.

20. Paragraph 4 requires each Party to establish its jurisdiction where the alleged offender is present in its territory and it does not extradite to any of the Parties mentioned paragraphs 1 or 2. This quasi-universal jurisdiction provision complements the *aut dedere aut judicare* rule in *Article 10(1)*. *Article 6(5)* is the standard saving provision that confirms that, in addition to jurisdiction authorised by the Convention, jurisdiction can also be exercised in accordance with domestic law, provided of course that the law is in conformity with customary international law.

Delivery of the alleged offender

21. *Article 8* is based loosely on *Articles 9, 13 and 14* of the Tokyo Convention. It lays down the rules for dealing with an alleged offender who has been detained on board. If the master of the ship of a Party ('flag State') has reasonable grounds to believe that the person has committed an offence, he or she may deliver him to the authorities of any other Party ('receiving State'). The master must notify, in advance, the authorities of his or her intention and the evidence. The receiving State must accept the person unless it 'has grounds' for considering that the person has not committed an offence, in which case it must give its reasons. The receiving State must exercise its jurisdiction in accordance with *Article 7*. A receiving State may later request the flag State to take back the person. The flag State is not obliged to do so, but if it declines it must give its reasons. If it accepts, it must exercise its jurisdiction in accordance with *Article 7*.

Exercise of jurisdiction

22. *Article 7(1) and (2)* follow closely *Article 6(1)* of the Hostages Convention (see p. 144 above). When an alleged offender¹³³ is present in the territory of a Party (whether delivered by the master of the ship under *Article 8* or otherwise), and it is 'satisfied that the circumstances so warrant', it must, in accordance with its law, take the person into custody or take such other measures to enable any criminal or extradition proceedings to be instituted. This is not intended to affect the right of innocent passage through the territorial sea.¹³⁴ The quoted phrase gives the Party a discretion, but it must be exercised reasonably and in good faith. It does not require the Party to arrest any person who is alleged to be an offender; there must be some grounds for the belief. Conversely, the Party cannot decline to take action for, say, political reasons. The obligation to take appropriate measures applies to every Party whether or not it has any connection with the offence or the alleged offender.

23. The carrying out of the obligations under *Article 7* is vital for the implementation of the *aut dedere aut punire* rule contained in *Article 10(1)*. That rule is central to this and the other conventions (except Tokyo and Explosives), embodying as it does the principle that alleged offenders cannot escape justice.¹³⁵ The text follows the substance of *Article 7* of the Hague Convention, the addition of the reference to *Article 6* and the words 'without delay' making no difference of substance.

¹³³ The provision refers also to 'the offender', as do some of the following articles. The reason is not clear, and most of the other conventions refer only to 'the alleged offender'. It may have been inserted to cover the case of a convicted terrorist who escapes.

¹³⁴ Plant, p. 48. As to innocent passage, see para. 29 below.

¹³⁵ See p. 8, para. 22, above for a full explanation.

Extradition

24. Paragraphs 1 to 4 of Article 11 are standard,¹³⁶ but paragraphs 5 and 7 are not found in the earlier conventions. Paragraph 5 provides that a Party which has received a request for extradition from more than one Party, and decides not to prosecute, shall, in selecting which State request to accept, pay due regard to the interests and responsibilities of the flag State.¹³⁷ Paragraph 7 is strictly speaking unnecessary since the point is clearly an implicit consequence of the obligations in paragraph 1, but was prompted by the difficulties experienced by the United States in obtaining the extradition of those accused of the *Achille Lauro* crime.¹³⁸ It has been included in the later conventions.

Rights of the alleged offender

25. *Article 7(3)* follows the earlier conventions in requiring that a person detained as an alleged offender shall be entitled to communicate without delay with (in practice) his or her consul, and be visited in custody by the consul. Paragraph 3 make explicit that, although these rights must be accorded in accordance with domestic law, full effect must be given to the rights. This useful addition is repeated in the later conventions. *Article 10(2)* follows *Article 8(2)* of the Hostages Convention and is repeated in the later conventions. An alleged offender must be guaranteed fair treatment at all stages of the legal proceedings in connection with the crime. These rights are elaborated in bilateral and multilateral treaties on consular relations, such as the Vienna Convention on Consular Relations 1963,¹³⁹ and in various universal human rights treaties, such as the International Covenant on Civil and Political Rights 1966,¹⁴⁰ and in regional human rights treaties. *Article 11(6)* requires a State which is requested to extradite an alleged offender to ‘pay due regard’ to whether the requesting State can give effect to the rights of the alleged offender set out in *Article 7(3)*.

Notifications

26. *Article 7(5)* requires the Party which has taken an alleged offender into custody to inform other States. *Article 14* requires a Party which has reason to believe that an offence will be committed to inform other Parties. *Article 15* requires each Party to inform the IMO Secretary-General of any information it has about (a) the circumstances of an offence, (b) any action taken pursuant to *Article 13(2)*, and (c) the measures taken in respect of the alleged offender, including the results of any extradition or other legal proceedings. The IMO Secretary-General then transmits the information to the other Parties, IMO Members and to other States concerned and to appropriate international organisations.

Cooperation

27. *Article 12* follows closely the Hague Convention. It requires Parties to assist each other with criminal proceedings (which would include pre-trial proceedings), including evidence, under mutual legal assistance treaties or, if none, in accordance with national law. *Article 13* requires the Parties to cooperate in the prevention of offences, in particular by trying to prevent preparations to commit them and

¹³⁶ See p. 8, paras. 24-30 above for details.

¹³⁷ See p. 14, para. 10 above about priority of jurisdiction.

¹³⁸ See Lambert, p. 26, n. 65.

¹³⁹ 596 UNTS 261 (Reg. No. 8638); UKTS (1973) 14.

¹⁴⁰ 999 UNTS 171 (Reg. No. 14668); ILM (1967), p. 1465; UKTS (1977) 6.

exchanging information and co-ordinating preventive measures. The Party in whose territory the ship is present is required to do its best to avoid the ship, passengers, crew or cargo being unduly detained or delayed, usually because of the need to gather evidence (*Article 13(2)*).

28. *Article 9* makes it clear that the Convention does not affect the rules of international law on the competence of States to exercise investigative or enforcement jurisdiction on board foreign ships. By entering a foreign port a ship comes within the territorial jurisdiction of the coastal State. The basic principle is that the coastal State will not enforce its laws if its interests are not affected and the matter can be dealt with effectively under the laws of the flag State. Thus disciplinary matters are normally left to the captain and to the authorities of the flag State. But if a serious crime has been committed the coastal State may exercise jurisdiction. This jurisdiction may go further than the provisions of the Convention, but it may be necessary to exercise it for the effective implementation of the Convention.

29. A similar situation applies in the territorial sea. The general rule is that a coastal State must not interfere with a ship in ‘innocent passage’ through the territorial sea. This means that in applying its laws and regulations the coastal State must not impose requirements or enforce its laws and regulations in a way which would have the effect of denying or impairing the right of innocent passage. Thus, the coastal State should¹⁴¹ generally not arrest a person on board a foreign ship, or investigate a crime committed on it, if the crime was committed before the ship entered the territorial sea. Nor should the coastal State generally exercise criminal jurisdiction if the crime was committed during the passage of the ship through the territorial sea unless the crime has an effect on the coastal State. But passage is not innocent if it is, *inter alia*, prejudicial to the peace, good order or security of the coastal State. A terrorist attack in the territorial sea, or the entry into the territorial sea of a ship which has been the subject of such an attack, is obviously a case where the coastal State may exercise jurisdiction, since it is in the interests of all States that the offence must be dealt with as soon as possible.¹⁴²

Disputes

30. *Article 16* is the standard provision in the conventions and provides that any dispute concerning the interpretation or application of the Convention may be referred to compulsory third party settlement. But under paragraph 2 a Party can declare on accession that it will not be bound by these provisions. The reservation can be withdrawn.

Reservations

31. In addition to a declaration under Article 16(2), a Party can make a reservation regarding any other provision of the Convention, provided that it is not contrary to the object and purpose of the Convention.¹⁴³

¹⁴¹ The rule is one of comity.

¹⁴² See generally, Churchill and Lowe (n. 9 above.)

¹⁴³ See p. 11, para. 34 above.

Accession or succession

32. If a State did not sign the Convention by 9 March 1989, it cannot do so now and then ratify the Convention, but it can become a Party by depositing an instrument of accession with the IMO Secretary-General (*Article 17*). A State that has become independent may be able to succeed formally to the Convention.¹⁴⁴ The Convention can be denounced (*Article 19*).

Review

33. *Article 20* provides for the possibility of a conference to revise or amend the Convention. This is normal for IMO conventions.

Implementing legislation

34. Model Legislative Provisions are at page 205 below. However, careful consideration will have to be given by each State which is considering becoming a Party to the Convention as to its precise needs for the content of the legislation.

¹⁴⁴ See p. 11, para. 35, above.

**CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST
THE SAFETY OF MARITIME NAVIGATION**
Signed at Rome, 10 March 1988

THE STATES PARTIES TO THIS CONVENTION,
HAVING IN MIND the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of friendly relations and co-operation among States,

RECOGNIZING in particular that everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

DEEPLY CONCERNED about the world-wide escalation of acts of terrorism in all its forms, which endanger or take innocent human lives, jeopardize fundamental freedoms and seriously impair the dignity of human beings,

CONSIDERING that unlawful acts against the safety of maritime navigation jeopardize the safety of persons and property, seriously affect the operation of maritime services, and undermine the confidence of the peoples of the world in the safety of maritime navigation,

CONSIDERING that the occurrence of such acts is a matter of grave concern to the international community as a whole,

BEING CONVINCED of the urgent need to develop international co-operation between States in devising and adopting effective and practical measures for the prevention of all unlawful acts against the safety of maritime navigation, and the prosecution and punishment of their perpetrators,

RECALLING resolution 40/61 of the General Assembly of the United Nations of 9 December 1985 which, *inter alia*, "urges all States unilaterally and in co-operation with other States, as well as relevant United Nations organs, to contribute to the progressive elimination of causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien occupation, that may give rise to international terrorism and may endanger international peace and security";

RECALLING FURTHER that resolution 40/61 "unequivocally condemns, as criminal, all acts, methods and practices of terrorism wherever and by whomever committed, including those which jeopardize friendly relations among States and their security",

RECALLING ALSO that by resolution 40/61, the International Maritime Organization was invited to "study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures",
HAVING IN MIND resolution A.584(14) of 20 November 1985, of the Assembly of the International Maritime Organization, which called for development of measures

to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crews,

NOTING that acts of the crew which are subject to normal shipboard discipline are outside the purview of this Convention,

AFFIRMING the desirability of monitoring rules and standards relating to the prevention and control of unlawful acts against ships and persons on board ships, with a view to updating them as necessary, and, to this effect, taking note with satisfaction of the Measures to Prevent Unlawful Acts against Passengers and Crews on Board Ships, recommended by the Maritime Safety Committee of the International Maritime Organization,

AFFIRMING FURTHER that matters not regulated by this Convention continue to be governed by the rules and principles of general international law,
RECOGNIZING the need for all States, in combating unlawful acts against the safety of maritime navigation, strictly to comply with rules and principles of general international law,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

For the purposes of this Convention, "ship" means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft.

ARTICLE 2

1. This Convention does not apply to:
 - (a) a warship; or
 - (b) a ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes; or
 - (c) a ship which has been withdrawn from navigation or laid up.
2. Nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes.

ARTICLE 3

1. Any person commits an offence if that person unlawfully and intentionally:
 - (a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
 - (b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or
 - (c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or
 - (d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or

- (e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or
 - (f) communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or
 - (g) injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).
2. Any person also commits an offence if that person:
- (a) attempts to commit any of the offences set forth in paragraph 1; or
 - (b) abets the commission of any of the offences set forth in paragraph 1 perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or
 - (c) threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b), (c) and (e), if that threat is likely to endanger the safe navigation of the ship in question.

ARTICLE 4

1. This Convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States.
2. In cases where the Convention does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State referred to in paragraph 1.

ARTICLE 5

Each State Party shall make the offences set forth in article 3 punishable by appropriate penalties which take into account the grave nature of those offences.

ARTICLE 6

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 when the offence is committed:
 - (a) against or on board a ship flying the flag of the State at the time the offence is committed; or
 - (b) in the territory of that State, including its territorial sea; or
 - (c) by a national of that State.
2. A State Party may also establish its jurisdiction over any such offence when:
 - (a) it is committed by a stateless person whose habitual residence is in that State; or
 - (b) during its commission a national of that State is seized, threatened, injured or killed; or
 - (c) it is committed in an attempt to compel that State to do or abstain from doing any act.

3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the International Maritime Organization (hereinafter referred to as "the Secretary-General"). If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.

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

ARTICLE 7

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its law, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts, in accordance with its own legislation.

3. Any person regarding whom the measures referred to in paragraph 1 are being taken shall be entitled to:

- (a) communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;
- (b) be visited by a representative of that State.

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or the alleged offender is present, subject to the proviso that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify the States which have established jurisdiction in accordance with article 6, paragraph 1 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 inquiry 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 8

1. The master of a ship of a State Party (the "flag State") may deliver to the authorities of any other State Party (the "receiving State") any person who he has

reasonable grounds to believe has committed one of the offences set forth in article 3.

2. The flag State shall ensure that the master of its ship is obliged, whenever practicable, and if possible before entering the territorial sea of the receiving State carrying on board any person whom the master intends to deliver in accordance with paragraph 1, to give notification to the authorities of the receiving State of his intention to deliver such person and the reasons therefor.

3. The receiving State shall accept the delivery, except where it has grounds to consider that the Convention is not applicable to the acts giving rise to the delivery, and shall proceed in accordance with the provisions of article 7. Any refusal to accept a delivery shall be accompanied by a statement of the reasons for refusal.

4. The flag State shall ensure that the master of its ship is obliged to furnish the authorities of the receiving State with the evidence in the master's possession which pertains to the alleged offence.

5. A receiving State which has accepted the delivery of a person in accordance with paragraph 3 may, in turn, request the flag State to accept delivery of that person. The flag State shall consider any such request, and if it accedes to the request it shall proceed in accordance with article 7. If the flag State declines a request, it shall furnish the receiving State with a statement of the reasons therefor.

ARTICLE 9

Nothing in this Convention shall affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag.

ARTICLE 10

1. The State Party in the territory of which the offender or the alleged offender is found shall, in cases to which article 6 applies, 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 without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 3 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided for such proceedings by the law of the State in the territory of which he is present.

ARTICLE 11

1. The offences set forth in article 3 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 3. Extradition shall be subject to the other conditions provided by the law of the requested State Party.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 3 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 3 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in a place within the jurisdiction of the State Party requesting extradition.

5. A State Party which receives more than one request for extradition from States which have established jurisdiction in accordance with article 6^[1] and which decides not to prosecute shall, in selecting the State to which the offender or alleged offender is to be extradited, pay due regard to the interests and responsibilities of the State Party whose flag the ship was flying at the time of the commission of the offence.

6. In considering a request for the extradition of an alleged offender pursuant to this Convention, the requested State shall pay due regard to whether his rights as set forth in article 7, paragraph 3, can be effected in the requesting State.

7. With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

ARTICLE 12

1. State Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 3, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties on mutual assistance that may exist between them. In the absence of such treaties, States Parties shall afford each other assistance in accordance with their national law.

ARTICLE 13

1. States Parties shall co-operate in the prevention of the offences set forth in article 3, particularly by:

- (a) taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories;

- (b) exchanging information in accordance with their national law, and co-ordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 3.
2. When, due to the commission of an offence set forth in article 3, the passage of a ship has been delayed or interrupted, any State Party in whose territory the ship or passengers or crew are present shall be bound to exercise all possible efforts to avoid a ship, its passengers, crew or cargo being unduly detained or delayed.

ARTICLE 14

Any State Party having reason to believe that an offence set forth in article 3 will be committed shall, in accordance with its national law, furnish as promptly as possible any relevant information in its possession to those States which it believes would be the States having established jurisdiction in accordance with article 6.

ARTICLE 15

1. Each State Party shall, in accordance with its national law, provide to the Secretary-General, as promptly as possible, any relevant information in its possession concerning:
- (a) the circumstances of the offence;
 - (b) the action taken pursuant to article 13, 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.
2. The State Party where the alleged offender is prosecuted shall, in accordance with its national law, communicate the final outcome of the proceedings to the Secretary-General.
3. The information transmitted in accordance with paragraphs 1 and 2 shall be communicated by the Secretary-General to all States Parties, to Members of the International Maritime Organization (hereinafter referred to as "the Organization"), to the other States concerned, and to the appropriate international intergovernmental organizations.

ARTICLE 16

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time 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, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by any or all of the provisions of paragraph 1. The other States Parties shall not be bound by those provisions with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 may, at any time, withdraw that reservation by notification to the Secretary-General.

ARTICLE 17

1. This Convention shall be open for signature at Rome on 10 March 1988 by States participating in the International Conference on the Suppression of Unlawful Acts against the Safety of Maritime Navigation and at the Headquarters of the Organization by all States from 14 March 1988 to 9 March 1989. It shall thereafter remain open for accession.

2. States may express their consent to be bound by this Convention by:

- (a) signature without reservation as to ratification, acceptance or approval; or
- (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
- (c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

ARTICLE 18

1. This Convention shall enter into force ninety days following the date on which fifteen States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession in respect thereof.

2. For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Convention after the conditions for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 19

1. This Convention may be denounced by any State Party at any time after the expiry of one year from the date on which this Convention enters into force for that State.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.

ARTICLE 20

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.

2. The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of one third of the States Parties, or ten States Parties, whichever is the higher figure.

3. Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

ARTICLE 21

1. This Convention shall be deposited with the Secretary-General.
2. The Secretary-General shall:
 - (a) inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
 - (ii) the date of the entry into force of this Convention;
 - (iii) the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect;
 - (iv) the receipt of any declaration or notification made under this Convention;
 - (b) transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.

3. As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 22

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.

DONE AT ROME this tenth day of March one thousand nine hundred and eighty-eight.

**STATUS OF RATIFICATION AND ACCESSION OF THE CONVENTION FOR THE
SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME
NAVIGATION, DONE AT ROME ON 10 MARCH 1988**

Entry into force: 1 March 1992

Status: 73 Parties

- | | |
|----|-----------------------|
| 1 | Albania |
| 2 | Algeria |
| 3 | Argentina |
| 4 | Australia |
| 5 | Austria |
| 6 | Barbados |
| 7 | Bolivia |
| 8 | Botswana |
| 9 | Bulgaria |
| 10 | Canada |
| 11 | Chile |
| 12 | China |
| 13 | Cuba |
| 14 | Cyprus |
| 15 | Denmark |
| 16 | Dominica |
| 17 | Egypt |
| 18 | El Salvador |
| 19 | Estonia |
| 20 | Finland |
| 21 | France |
| 22 | Gambia |
| 23 | Germany |
| 24 | Greece |
| 25 | Grenada |
| 26 | Hungary |
| 27 | Iceland |
| 28 | India |
| 29 | Italy |
| 30 | Japan |
| 31 | Kenya |
| 32 | Lebanon |
| 33 | Liberia |
| 34 | Libyan Arab Jamahiriy |
| 35 | Mali |
| 36 | Malta |
| 37 | Marshall Islands |
| 38 | Mexico |
| 39 | Monaco |
| 40 | Morocco |
| 41 | Netherlands |
| 42 | New Zealand |
| 43 | Norway |

44	Oman
45	Pakistan
46	Palau
47	Panama
48	Peru
49	Poland
50	Portugal
51	Romania
52	Russian Federation
53	Saint Kitts and Nevis
54	St Vincent & the Grenadines
55	Seychelles
56	Slovakia
57	Spain
58	Sri Lanka
59	Sudan
60	Sweden
61	Switzerland
62	Trinidad & Tobago
63	Tunisia
64	Turkey
65	Turkmenistan
66	Ukraine
67	United Kingdom
68	United States
69	Uruguay
70	Uzbekistan
71	Vanuatu
72	Vietnam
73	Yemen

MODEL LEGISLATIVE PROVISIONS TO IMPLEMENT THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION

NOTE

No specific penalties for the offences have been included because of the variation in sentencing practice between states. However the Convention requires penalties that reflect the seriousness of the offence and therefore maximum penalties should be set including, if appropriate, a life sentence.

Whereas a Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation was signed in Rome on March 10, 1988:

And Whereas (name of country) intends to accede to the said Convention by depositing an instrument of accession with the Secretary General of the United Nations:

And Whereas it is necessary to make legal provision to give effect to (name of country) obligations under the said Convention:

Now therefore, be it enacted by the Parliament of (name of country) as follows:-

Short title and date of operation

1. This Act may be cited as the Suppression of Unlawful Acts against the Safety of Maritime Navigation Act, and shall come into operation on such date as the Minister (responsible for Foreign Affairs) certifies, by Order published in the Gazette, as the date on which the Convention enters into force in respect of (name of country).

Interpretation

2. In this Act, unless the context otherwise requires -

“Convention” means the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation signed in Rome on March 10, 1988;

“Convention State” means a State which is declared by the Minister (of Foreign Affairs), by Order published in the Gazette, to be a party to the Convention;

“ship” means any type of vessel whatsoever not permanently attached to the sea bed, and includes a hovercraft, hydrofoil, submarine or other floating craft but does not include a warship, a ship owned or operated by a

State and being used as a naval auxiliary or for customs or police purposes or a ship which has been withdrawn from navigation ;

“Warship” means a ship belonging to the armed forces of a State and bearing distinguishing external marks, under the command of an officer duly commissioned by the Government of that State, and manned by a crew which is under regular armed services discipline.

Offences

3. (1) Every person who intentionally –
 - (a) seizes, or exercises control over, a ship by force or threat of force or other form of intimidation;
 - (b) commits an act of violence against a person on board a ship, which act is likely to endanger the safe navigation of that ship;
 - (c) destroys a ship;
 - (d) causes damage to a ship or its cargo which is likely to endanger the safe navigation of that ship;
 - (e) places, or causes to be placed, on a ship, by any means whatsoever, a device or substance, which is likely to destroy the ship or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship;
 - (f) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation which act is likely to endanger the safe navigation of a ship;
 - (g) communicates information which he or she knows to be false thereby endangering the safe navigation of a ship;
 - (h) injures or kills any other person in connection with the commission, or attempted commission, of any of offences described in paragraph (a), (b), (c), (d), (e), (f), or (g),

commits an offence and upon conviction shall be liable to imprisonment for a term of () years.
- (2) Every person who -
 - (a) attempts to commit,
 - (b) abets the commission of,
 - (c) is an accomplice to a person committing or attempting to commit, an offence under subsection (1) commits an offence under this Act and upon conviction shall be liable to imprisonment for a term of () years.
- (3) Every person who, with the intention of compelling any other person to do, or refrain from doing any act, threatens to commit any of the offences described in paragraph (b), (c), (d) or (f) of subsection (1), in relation to a ship, which threat is likely to endanger the safety of that ship, commits an offence and upon conviction shall be liable to imprisonment for a term of () years.

Jurisdiction

NOTE

This Convention contains mandatory and discretionary provisions regarding jurisdiction. In section 4 below, all the basis of jurisdiction mentioned in the Convention are included with those that are discretionary in italics.

The Convention contains a “prosecute or extradite” obligation with respect to the offences. In order to meet this requirement, a State must have the jurisdiction to prosecute an offence where the person is present on that State’s territory, regardless of the fact that no basis of jurisdiction set out in 4 (2) (a) – (e) exists. In order to meet this obligation, the State needs to have jurisdiction arising from the person’s presence in that state. One way to incorporate that jurisdiction is through a universal jurisdiction clause based on the presence of the person. This has been reflected in sub section 4(2) (f). If that is considered overly broad, the bracketed and italicized language at the end of 4(2) (f) can be added limiting the application of the section to cases where extradition is not possible. While this second approach is more limited in scope, there may be problems of proof arising from the need to establish that extradition is not possible.

4. (1) Offences under this Act are triable by the High Court (highest court exercising original criminal jurisdiction).
- (2) The High Court shall have jurisdiction to try an offence under this Act in every case where the act constituting the offence –
 - (a) is committed against, or on board a ship registered in (name of country);
 - (b) is committed within(name of country) including its territorial sea;
 - (c) is committed by a national of(name of country)
or by a stateless person whose habitual residence is in (name of country), whether the act constituting the offence is committed within or outside(name of country);
 - (d) *has resulted in –*
 - (i) *a threat to,*
 - (ii) *the seizure of,*
 - (iii) *an injury to, or*
 - (iv) *the killing of,**a national of(name of country), whether the act constituting the offence is committed within or outside (name of country);*
 - (e) *is committed in an attempt to compel the Government of name of country) to do, or abstain from doing, any act, whether the act constituting the offence is committed within or outside (name of country);*
 - (f) is committed by a person who is, after the commission of the act, present in(name of country), whether the act constituting the offence is committed within or outside.....(name of

country) [*and he or she cannot be extradited to a foreign state having jurisdiction over the offence.*] .

Arrest and delivery

5. (1) The Master of a ship registered in (name of country) who has reasonable grounds to believe that any person has committed an offence under this Act against, or on board that ship, may forthwith arrest and detain such person,
 - (2) The Master may, subject to subsections (3) and (4), deliver a person arrested and detained under subsection (1), to the appropriate authorities in any other Convention State.
 - (3) Before delivering a person arrested and detained under subsection (1) to the appropriate authorities in a Convention State, the Master shall notify those authorities of his or her intention to do so.
 - (4) Where the Master delivers a person arrested and detained under subsection (1) to the appropriate authorities in a Convention State, he or she shall furnish to those authorities, the evidence in his or her possession supporting the commission of an offence under this Act by that person.
- (5) Where the Master of the ship registered in another Convention State delivers to a police officer in (name of country), a person arrested and detained on that ship on suspicion of having committed an offence corresponding to an offence under this Act, it shall be the duty of such police officer to take such person into custody, unless the police officer has reasonable grounds to believe that such a person has not committed the offence as alleged. Where a police officer refuses to take such person into custody, he or she shall give written reasons for such refusal.
- (6) The Master of a ship registered in (name of country) who fails, without reasonable cause, to comply with subsection (3) or (4) commits an offence under this Act and shall be liable to imprisonment for a term not exceeding five years.

Extradition

6. (1) the offences described in section 3 shall be deemed to be extraditable offences under the Extradition Act, and accordingly, the provisions of that Act shall apply to, and in relation to, extradition in respect of those offences.
- (2) Where there is, on the date on which this Act comes into operation, an extradition arrangement in force between the Government of (name of country) and a Convention State, such arrangement shall, for the purposes of the Extradition Act, be deemed to include provision for extradition in respect of the offences described in Section 3.
- (3) Where there is no extradition arrangement between the Government of (name of country) and a Convention State, the Minister (responsible for Foreign Affairs) may, by Order published in the Gazette, treat the Convention, for the purposes of the Extradition Act, as an extradition arrangement between the Government of (name of

country) and such Convention State providing for extradition in respect of the offences described in section 3.

- (4) Where the Government of (name of country) accedes to request by a Convention State for the extradition of a person accused of an offence described in section 3, the act constituting such offence shall, for the purposes of the Extradition Act, be deemed to have been committed not only in the place where it was committed but also within the jurisdiction of the requesting Convention State.

CHAPTER TEN

PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF 1988 (‘Rome Protocol’)

1. The reason for the Protocol was the obvious danger to the increasing number of fixed offshore platforms, used mainly by the oil industry.
2. The Protocol was adopted on 10 March 1988 at a conference in Rome convened by the International Maritime Organisation (IMO), which also adopted that day the Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation ('the Convention'). The Protocol entered into force on the same date as the Convention, 1 March 1992. As of September 2002 there were 55 Parties to the Protocol, including 14 Commonwealth States. The text of the Protocol is at page 214 below; and the complete list of ratifications and accessions is at page 218 below.

Scope of the Convention

2. The Protocol piggybacks on the Convention. *Article 1(1)* provides that *Articles 5, 7 and 10 to 16* of the Convention (including exercise of jurisdiction, the *aut dedere aut judicare* rule and extradition) shall apply *mutatis mutandis* to the offences defined in the Protocol where such offences are committed on board or against fixed platforms located on the continental shelf (see paragraph 5 below).

3. Even where the Protocol does not apply pursuant to *Article 1(1)*, it nevertheless applies if the alleged offender has fled and is found in the territory of a Party other than the one in whose internal waters or territorial sea (but, for some inexplicable reason, not the Exclusive Economic Zone) the fixed platform is located: *Article 1(2)* (c.f. *Article 4(2)* of the Convention).

Definition of fixed platform

4. A ‘fixed platform’ is defined in *Article 1(3)* as ‘an artificial island, installation or structure *permanently attached* to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes’. This dovetails with the definition of ‘ship’ in Article 1 the Convention (‘...vessel of any type whatsoever *not permanently attached* to the sea-bed ...’). The Protocol definition therefore excludes mobile off-shore drilling platforms which are attached temporarily to the sea-bed and towed to and from their destinations, and are therefore covered by the Convention.

5. Although the definition of fixed platform refers only to the sea-bed, the preamble, *Articles 1(1), 3, and 4*, and indeed the title of the Protocol, all speak of the ‘continental shelf’. The reason is, once again, poor drafting. There are two sea-beds, the sea-bed of the continental shelf and the deep ocean floor. It is the first with which we are here concerned. *Article 76* of the United Nations Convention on the Law of the Sea 1982¹⁴⁵ defines the continental shelf of a coastal State as comprising

¹⁴⁵ 1833 UNTS 3 (Reg. No. 31363); ILM (1982), p. 1261; UKTS (1999) 82.

‘the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.’

The ‘continental margin’ is defined in the same article as

‘the submerged prolongation of the land mass of the coastal State, and consists of the sea-bed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor...’

Fortunately these well-drafted, but almost incomprehensible terms, are lucidly explained in R. Churchill and A. Lowe, *The Law of the Sea* (3rd ed., Manchester, 1999), at pp. 141 to 159, and in the illuminating illustration at page 30 of that book.

Offences

6. As in Article 3(1) of the Convention, Article 2 lists acts which constitute offences when committed unlawfully and intentionally. It is necessary in this context to include ‘unlawfully’ since there can be circumstances in which force, or the threat of force, may have to be used to carry out a lawful act, such an attack by special forces to regain control of a fixed platform taken over by terrorists.

7. Paragraph 2 lists the offences as:

- (a) seizing or exercising control over a fixed platform by force or threat of force or any other form of intimidation,
- (b) performing an act of violence against a person on board a fixed platform if that act is likely to endanger its safety,
- (c) destroying a fixed platform or causing damage to it which is likely to endanger its safety,
- (d) placing or causing to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety, or
- (e) injuring or killing any person in connection with the commission or the attempted commission of any of the offences set forth in (a) to (d).

8. Under paragraph 2(a) and (b), to attempt to commit an offence, or to abet an offence, or to be an accomplice, is itself an offence. But, as in the Convention, it does not include an offence of being an accomplice to an *attempt*, as do the earlier and later conventions. This omission may be rectified in implementing legislation.

9. Paragraph 2(c), follows Article 3(2)(c) of the Convention in providing that it is also an offence for a person, in order to compel a physical or juridical person to do or refrain from doing any act, to threaten, with or without a condition, that he or she will commit an offence under subparagraphs Article 2(1)(b) or (c), provided the threat is likely to endanger the safety of the fixed platform. The obligation to make this an offence is qualified by the words ‘as is provided for under national law’. This leaves it to each Party to decide whether or not to provide that the threat must be accompanied by a condition.

Establishment of jurisdiction

10. *Article 3* follows the pattern of Article 6 of the Convention, adapted to deal with the differences between a fixed platform and a ship. Paragraph 1 requires each Party to establish its jurisdiction over Protocol offences when they are committed (a) against or on board a fixed platform located on the continental shelf of that Party (the nationality of the alleged offender being immaterial); or (b) by one of its nationals (anywhere).

11. Paragraph 2 is identical to *Article 6(2)* of the Convention. It authorises, but does not require, each Party to establish its jurisdiction over a Protocol offence in three other circumstances, (a) when it is committed by a stateless person whose habitual residence is in that State; (b) when one of its nationals is seized, threatened, injured or killed; or (c) when it was committed in an attempt to compel the Party to do or abstain from doing any act. For a fuller explanation, see page 189, para. 19, above.

12. Paragraph 4 is identical in substance to *Article 6(4)* of the Convention in requiring each Party to establish its jurisdiction where the alleged offender is present in its territory and it does not extradite to any of the States mentioned in paragraphs 1 or 2. This provision is necessary in order to implement the *aut dedere aut judicare* rule in *Article 10(1)* of the Convention, as incorporated by *Article 1(1)* of the Protocol.

13. Paragraph 5 is the same as *Article 6(5)* of the Convention.

Saving provision

14. *Article 4* provides that nothing in the Protocol affects the rules of international law pertaining to fixed platforms located on the continental shelf. This was inserted out of caution. The main rules are in the United Nations Convention on the Law of the Sea 1982.¹⁴⁶

Final clauses

15. Although the Protocol borrows most of the articles of the Convention, it must have its very own set of final clauses since, despite its close links with the Convention, the Protocol is nevertheless a treaty in its own right.

Reservations

16. In addition to a declaration regarding dispute settlement under *Article 16(2)* of the Convention, as incorporated, a Party can make a reservation regarding any other provision of the Protocol, provided that it is not contrary to its object and purpose.¹⁴⁷

Accession, denunciation and review

17. If a State did not sign the Protocol by 9 March 1989, it cannot do so now and then ratify the Protocol, but it can become a Party by depositing an instrument of accession with the IMO Secretary-General. *But, a State cannot accede to the Protocol unless it first accedes to the Convention (Article 5)*. A State that has become independent may be able to succeed formally to the Protocol.¹⁴⁸ The Protocol can be denounced (*Article 7*).

18. *Article 8* provides for the possibility of a conference to revise or amend the Protocol. This is normal for IMO treaties.

¹⁴⁶ See, Churchill and Lowe, pp. 153-156.

¹⁴⁷ See p 11, para. 34 above.

¹⁴⁸ See p. 11 para. 35 above.

Implementing legislation

19. Model Legislative Provisions are at page ** below. However, careful consideration will have to be given by each State which is considering becoming a Party to the Convention as to its precise needs for the content of the legislation.

**PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE
SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF**
Signed at Rome, 10 March 1988

THE STATES PARTIES TO THIS PROTOCOL,

BEING PARTIES to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation,

RECOGNIZING that the reasons for which the Convention was elaborated also apply to fixed platforms located on the continental shelf,

TAKING ACCOUNT of the provisions of that Convention,

AFFIRMING that matters not regulated by this Protocol continue to be governed by the rules and principles of general international law,

HAVE AGREED as follows:

ARTICLE 1

1. The provisions of articles 5 and 7 and of articles 10 to 16 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (hereinafter referred to as "the Convention") shall also apply *mutatis mutandis* to the offences set forth in article 2 of this Protocol where such offences are committed on board or against fixed platforms located on the continental shelf.

2. In cases where this Protocol does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State in whose internal waters or territorial sea the fixed platform is located.

3. For the purposes of this Protocol, "fixed platform" means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes.

ARTICLE 2

1. Any person commits an offence if that person unlawfully and intentionally:
 - (a) seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation; or
 - (b) performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety; or
 - (c) destroys a fixed platform or causes damage to it which is likely to endanger its safety; or
 - (d) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety; or
 - (e) injures or kills any person in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (d).
2. Any person also commits an offence if that person:
 - (a) attempts to commit any of the offences set forth in paragraph 1; or

- (b) abets the commission of any such offences perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or
- (c) threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b) and (c), if that threat is likely to endanger the safety of the fixed platform.

ARTICLE 3

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when the offence is committed:
 - (a) against or on board a fixed platform while it is located on the continental shelf of that State; or
 - (b) by a national of that State.
2. A State Party may also establish its jurisdiction over any such offence when:
 - (a) it is committed by a stateless person whose habitual residence is in that State;
 - (b) during its commission a national of that State is seized, threatened, injured or killed; or
 - (c) it is committed in an attempt to compel that State to do or abstain from doing any act.
3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the International Maritime Organization (hereinafter referred to as "the Secretary-General"). If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.
4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.
5. This Protocol does not exclude any criminal jurisdiction exercised in accordance with national law.

ARTICLE 4

Nothing in this Protocol shall affect in any way the rules of international law pertaining to fixed platforms located on the continental shelf.

ARTICLE 5

1. This Protocol shall be open for signature at Rome on 10 March 1988 and at the Headquarters of the International Maritime Organization (hereinafter referred to as "the Organization") from 14 March 1988 to 9 March 1989 by any State which has signed the Convention. It shall thereafter remain open for accession.
2. States may express their consent to be bound by this Protocol by:
 - (a) signature without reservation as to ratification, acceptance or approval; or

- (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - (c) accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.
 4. Only a State which has signed the Convention without reservation as to ratification, acceptance or approval, or has ratified, accepted, approved or acceded to the Convention may become a Party to this Protocol.

ARTICLE 6

1. This Protocol shall enter into force ninety days following the date on which three States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession in respect thereof. However, this Protocol shall not enter into force before the Convention has entered into force.

2. For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Protocol after the conditions for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 7

1. This Protocol may be denounced by any State Party at any time after the expiry of one year from the date on which this Protocol enters into force for that State.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.

4. A denunciation of the Convention by a State Party shall be deemed to be a denunciation of this Protocol by that Party.

ARTICLE 8

1. A conference for the purpose of revising or amending this Protocol may be convened by the Organization.

2. The Secretary-General shall convene a conference of the States Parties to this Protocol for revising or amending the Protocol, at the request of one third of the States Parties, or five States Parties, whichever is the higher figure.

3. Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Protocol shall be deemed to apply to the Protocol as amended.

ARTICLE 9

1. This Protocol shall be deposited with the Secretary-General.
2. The Secretary-General shall:
 - (a) inform all States which have signed this Protocol or acceded thereto, and all Members of the Organization, of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) the date of entry into force of this Protocol;
 - (iii) the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect;
 - (iv) the receipt of any declaration or notification made under this Protocol or under the Convention, concerning this Protocol;
 - (b) transmit certified true copies of this Protocol to all States which have signed this Protocol or acceded thereto.
3. As soon as this Protocol enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 10

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

DONE AT ROME this tenth day of March one thousand nine hundred and eighty-eight.

**STATUS OF RATIFICATION, ACCESSION OF THE PROTOCOL FOR
THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF
FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF,
DONE AT ROME ON 10 MARCH 1988**

Entry into force: 1 March 1992

Status: 66 Parties

- 1 Albania
- 2 Australia
- 3 Austria
- 4 Barbados
- 5 Bolivia
- 6 Botswana
- 7 Bulgaria
- 8 Canada
- 9 Chile
- 10 China
- 11 Cuba
- 12 Cyprus
- 13 Denmark
- 14 Egypt
- 15 El Salvador
- 16 Finland
- 17 France
- 18 Germany
- 19 Greece
- 20 Grenada
- 21 Hungary
- 22 Iceland
- 23 India
- 24 Italy
- 25 Japan
- 26 Kenya
- 27 Lebanon
- 28 Liberia
- 29 Libyan Arab Jamahiriya
- 30 Mali
- 31 Malta
- 32 Marshall Islands
- 33 Mexico
- 34 Monaco
- 35 Morocco
- 36 Netherlands
- 37 New Zealand
- 38 Norway
- 39 Oman
- 40 Pakistan
- 41 Palau
- 42 Panama

43	Peru
44	Poland
45	Portugal
46	Romania
47	Russian Federation
48	St Vincent & the Grenadines
49	Seychelles
50	Slovakia
51	Spain
52	Sudan
53	Sweden
54	Switzerland
55	Trinidad & Tobago
56	Tunisia
57	Turkey
58	Turkmenistan
59	Ukraine
60	United Kingdom
61	United States
62	Uruguay
63	Uzbekistan
64	Vanuatu
65	Vietnam
66	Yemen

PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF

NOTE

No specific penalties for the offences have been included because of the variation in sentencing practice between states. However the Convention requires penalties that reflect the seriousness of the offence and therefore maximum penalties should be set including, if appropriate, a life sentence.

Whereas a Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf was signed in Rome on March 10, 1988:

And Whereas (name of country) intends acceding to the said Protocol by depositing an instrument of accession with the Secretary – General of the International Maritime Organisation:

And Whereas it is necessary to make legal provision to give effect to (name of country) obligations under the said Protocol :

Now therefore be it enacted by the Parliament of (name of country) as follows:

Short title and date of operation

1. This Act maybe cited as the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf Act, and shall come into operation on such date as the Minister (responsible for Foreign Affairs) certifies by Order published in the Gazette, as the date on which the Protocol enters into force in respect of (name of country).

Interpretation

2. In this Act unless the context otherwise requires –

“fixed platform” means an artificial island, installation or structure permanently attached to the sea bed for the purposes of exploration or exploitation of resources or for other economic purposes;

“Protocol” means the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf signed in Rome on March 10, 1988

Offences

- 3 (1) Every person who intentionally -
(a) seizes or exercises control over a fixed platform by force or threat of force or any other form of intimidation;

- (b) commits an act of violence against a person on board a fixed platform, being an act which is likely to endanger the safety of that fixed platform;
- (c) destroys or causes damage to a fixed platform, being in either case an act which is likely to endanger the safety of that fixed platform;
- (d) places or causes to be placed, on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or endanger its safety;
- (e) injures or kills any other person in connection with the commission or attempted commission of any of the offences described in paragraphs (a), (b), (c), or (d),

commits an offence under this Act and upon conviction shall be liable to imprisonment for a term of () years.

- (2) Every person who -
 - (a) attempts to commit,
 - (b) abets the commission of,
 - (c) is the accomplice of a person committing or attempting to commit,

an offence under subsection (1) commits an offence and shall be liable to imprisonment for a term of () years.

- (3) Every person who, with the intention of compelling a person to do, or abstain from doing any act, threatens to commit any of the offences described in paragraphs (b) or (c) of subsection (1), which threat is likely to endanger the safety of that fixed platform commits an offence and shall be liable to imprisonment for a term of () years.

Jurisdiction

NOTE

The Protocol contains mandatory and discretionary provisions regarding jurisdiction. In section 4 below, all the basis of jurisdiction mentioned in the Protocol are included with those that are discretionary in italics.

The Protocol contains a “prosecute or extradite” obligation with respect to the offences. In order to meet this requirement, a State must have the jurisdiction to prosecute an offence where the person is present on that State’s territory, regardless of the fact that no basis of jurisdiction set out in 4 (2) (a) – (e) exists. In order to meet this obligation, the State needs to have jurisdiction arising from the person’s presence in that state. One way to incorporate that jurisdiction is through a universal jurisdiction clause based on the presence of the person. This has been reflected in sub section 4(2) (f). If that is considered overly broad, the bracketed and italicized language at the end of 4(2) (f) can be added limiting the application of the section to cases where extradition is not possible. While this second approach is more limited in scope, there may be problems of proof arising from the need to establish that extradition is not possible.

4. (1) All offences under this Act shall be tried by the High Court (highest court exercising original criminal jurisdiction)
- (2) The High Court shall have jurisdiction to try an offence under this Act in every case where the act constituting the offence –
 - (a) is committed against, or on board, a fixed platform located on the continental shelf of (name of country);
 - (b) is committed by a national of (name of country), wherever the act constituting the offence is committed;
 - (c) *is committed by a stateless person whose habitual residence is in (name of country), wherever the act constituting the offence is committed;*
 - (d) *results in –*
 - (i) *the seizure of,*
 - (ii) *a threat to,*
 - (iii) *an injury to, or*
 - (iv) *the killing of,*
a national of (name of country) wherever the act constituting the offence is committed;
 - (e) *is committed in an attempt to compel the Government of (name of country) to do or abstain from doing any act, wherever the act constituting the offence is committed;*
 - (f) is committed by a person who is, after the commission of the act, present in (name of country), wherever the act constituting the offence is committed [*and he or she cannot be extradited to a foreign state having jurisdiction over the offence*].

Extradition

5. (1) The offences described in section 3 shall be deemed to be extraditable offences under the Extradition Act, and accordingly, the provisions of that Act shall apply to, and in relation to, extradition in respect of those offences.
- (2) Where there is, on the date on which this Act comes into operation, an extradition arrangement in force between the Government of (name of country) and a State which is a party to the Protocol, such arrangement shall, for the purposes of the Extradition Act, be deemed to include provision for extradition respect of the offences described in Section 3.
- (3) Where there is no extradition arrangement between the Government of (name of country) and a State which is a party to the Protocol, the Minister (of Foreign Affairs) may, by Order published in the Gazette, treat the Protocol, for the purposes of the Extradition Act, as an extradition arrangement between the Government of (name of country) and such State providing for extradition in respect of the offences described in section 3.

- (4) Where the Government of (name of country) accedes to request by a State which is a party to the Protocol for the extradition of a person accused of an offence described in section 3, the act constituting such offence shall, for the purposes of the Extradition Act, be deemed to have been committed not only in the place where it was committed but also within the jurisdiction of the requesting State.

CHAPTER ELEVEN

CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES FOR THE PURPOSE OF DETECTION 1991 (‘Explosives Convention’)

1. This Convention is very different from the other eleven, even the Tokyo Convention, in that it is not directed at the arrest and prosecution of terrorists, but at better detection of a particularly dangerous explosive used by terrorists and other criminals. It therefore does not create any offences, though the implementing legislation will have to. The basic purpose of the Convention is to prevent terrorists, or for that matter any other person with no legitimate right to them, being able to obtain *unmarked* plastic explosives. The existence of criminal penalties may help to deter crime, but the increased possibility of detection should be an even more effective deterrent. Most States have rigorous controls on explosives, including their manufacture, possession, transport and use. The main thrust of the Convention is therefore to tackle the problem posed by the difficulty of detecting *unmarked* plastic explosives. The Convention does not therefore follow the structure or substance of the other conventions. The United Nations lists the Convention as one of the 12 counter-terrorism conventions only because of its importance for the continual fight against terrorism.

2. The sabotage of civil aircraft by terrorists grew markedly in the 1980s. In 1985 there were 13 acts of sabotage killing 473 people.¹⁴⁹ In 1989 two acts killed 279, and it was that year, in the aftermath of what had by then been the single most serious international terrorist attack, that the Convention was conceived. On 21 December 1988 a Boeing 747 aircraft of Pan American Airways on flight PA103 exploded over Scotland killing all 259 passengers and crew and eleven residents of Lockerbie. Wreckage was scattered over an area of 2190 square kilometres. One week later it had been established by scientific examination of wreckage that the aircraft had been destroyed by the detonation of a high performance plastic explosive. This was later confirmed by the report of a Fatal Accidents Inquiry, and the judgment of the Scottish Court sitting in the Netherlands which tried the two Libyans accused of the murder, to have been SEMTEX hidden in a Toshiba radio/cassette player.¹⁵⁰

3. The crime was condemned by the United Nations Security Council on 30 December 1988 (SC/5057). Although Czechoslovakia was not then a member of the Council, it was the primary commercial manufacturer and exporter of the SEMTEX. It therefore proposed to the United Kingdom that the two States should promote a Security Council resolution calling upon all States to cooperate in devising and implementing measures to prevent acts of terrorism involving unmarked plastic explosives, and pursue this within the International Civil Aviation Organisation (ICAO). On 14 June 1989 the Security Council adopted Resolution 635(1989) expressing concern at the ease with which unmarked plastic explosives could be used by terrorists with little risk of detection. The resolution urged ICAO to work on devising an international regime for the marking of plastic explosives to make them detectable. The resolution was reinforced by the United Nations General Assembly on 4 December 1989 in Resolution 44/29.

¹⁴⁹ See M. Milde, ‘Draft Convention on the Marking of Explosives’, *Annals of Air and Space Law*, (1990), pp. 155-179, for the background and an account the initial drafting process, including a discussion of the difficult technical problems encountered.

¹⁵⁰ For the history of the process that led to the trial, see A. Aust, ‘Lockerbie: the other case’, ICLQ (April 2000), pp. 278 *et seq.*

4. The Convention was adopted at Montreal on 1 March 1991 and entered into force on 21 June 1998. As of September 2002 it had 80 Parties, including 17 Commonwealth States. Four other Commonwealth States have signed but not yet ratified. The text of the Convention is at page 229 below, and the complete list of signatures, ratifications, accessions and successions at page 235 below.

5. Although most Commonwealth States do not manufacture plastic explosives, it is nevertheless important that all States should be able to control the possession and transfer of unmarked plastic explosives, and prevent their manufacture.

Scope of the Convention

6. Although the Convention was adopted within ICAO, both its preamble and articles show that its purpose is not limited to preventing the use of unmarked plastic explosives in attacks on aircraft.¹⁵¹ It is directed at the detection of any unmarked plastic explosives and not with any particular use to which they may be put. It should therefore help to prevent the use of plastic explosives in any terrorist attacks or by other criminals, whatever their target.

ARTICLE 1 (definitions)

‘Explosives’

7. This term is used as shorthand for ‘explosive products, commonly known as “plastic explosives”, including explosives in flexible or elastic sheet form’. Seven ounces (250 grams) of SEMTEX can destroy an aircraft in flight. Being readily malleable, it can be rolled into thin sheets and used to line the inside of a suitcase or briefcase. This is why the resolutions referred also to ‘sheet’ explosives. However, the technical experts involved in drawing up the Convention advised that it would not be technically correct to include ‘sheet’ since this refers only to the shape the plastic explosive may take and has no relevance to its physical and chemical properties. The Convention does not therefore refer to sheet explosives except as an indication of the form into which plastic explosives can be fashioned.¹⁵² (*Any reference in the following paragraphs to ‘explosive(s)’ is therefore to plastic explosives.*)

8. Part 1(I) of the Technical Annex to the Convention describes in detail the chemical and physical properties of the explosives. They consist of ‘high explosives’ which are defined, non-exhaustively, in Part 1(III). Part 1(II) deems not to be explosives those limited quantities which continue to be held or used either for specified purposes (research, development, training, testing, forensic science etc.), or are destined to be, and are, incorporated into a military device in specified circumstances (see also Article 4(4) and paragraph 19 below). This exception is therefore not based on technical characteristics, but on the *purpose* to which the explosives are to be put. Lest it be thought that plastic explosives are inherently evil, or properly used only by the military or police, it should be made clear that they are used extensively for commercial purposes, such as mining, excavation and demolition. It is their misuse that is criminal.

¹⁵¹ See R. van Dam, ‘A New Convention on the Marking of Plastic Explosives for the Purpose of Detection’, *Air Law* (1990), pp. 167-177.

¹⁵² However, alone of the five authentic languages, the French text refers also to explosives ‘en feuille’ (in sheet form). The diplomatic conference accepted that, although in most languages it would be superfluous and confusing to refer also to sheet explosives, in French it is not.

'Detection agent'

9. The properties of the explosive are such that it is inert. Although it will burn, it can be detonated only by an electrical charge. It is virtually invisible unless it is marked by a chemical substance which enables the explosive to be detected by special 'sniffer' machines. A 'detection agent' is thus a chemical substance introduced into the explosive to make it detectable. Three types of 'detection agent' are described in detail in the Technical Annex, Part 2, and in its Table (see below). Parties can choose one or more of the three.

'Marking'

10. 'Marking' simply means introducing a detection agent into the explosive in accordance with the Technical Annex, Part 2. Marking enables the explosive to be detected, but is not a chemical 'fingerprint' since it will not identify where the explosive was made. The essence of the scheme of the Convention is that the production, movement, possession and use of plastic explosives is, subject to existing general controls on explosives, permitted provided they are marked in accordance with the requirements of the Convention.

'Manufacture'

11. This is defined in broad and non-exhaustive terms to be 'any process, including reprocessing, that produces explosives'.

'Duly authorised military devices'

12. This (also non-exhaustive) definition is relevant to *Article 4* and Part 1, paragraph II(d), of the Technical Annex (see paragraphs [19, 20 and 22] below). The words 'duly authorised' are defined in the Technical Annex, Part 1, paragraph III.

'Producer State'

13. This term means any State in whose territory explosives are manufactured.

(It will now be all too apparent that the rather complex provisions of *Article 4* and the Technical Annex have to be read carefully with these definitions).

ARTICLE 2 (manufacture of explosives)

14. Each Party is required to take 'necessary and effective measures' to prohibit and prevent the manufacture in its territory of unmarked explosives. This requires not only legislation to make it illegal to make unmarked explosives, but practical measures, such inspection of premises known, or suspected of being used, to make explosives. This in turn requires statutory powers of entry.

ARTICLE 3 (movement of explosives)

15. Each Party is required by paragraph 1 to take necessary and effective measures to prohibit and prevent the movement into or out of its territory of unmarked explosives. The term 'movement' is broader than export and import. As with *Article 2*, this requires legislative and practical steps. Paragraph 2 exempts movements of unmarked explosives by authorities of a Party performing 'military or police functions' if the explosives are under the control of the Party in accordance with *Article 4(1)*, and provided the movement is 'for purposes not inconsistent with the objectives' of the Convention. The phrase 'performing military or police functions' indicates that it covers not only the armed forces and police forces, but any other public authorities performing such functions, which could include the coastguard and customs. Although the objectives of the Convention are nowhere specifically defined, its general objectives are plain from its provisions. The phrase

‘performing military or police functions’ is circumscribed also by the rest of the paragraph, in that the movement of unmarked explosives must be done by authorities performing military or police functions and be under the control of the Party in accordance with *Article 4(1)*. The precise application of this requirement will inevitably depend on the particular circumstances of each case.

ARTICLE 4 (existing stocks)

16. Paragraph 1 requires each Party to exercise ‘strict and effective’ control over the ‘possession and transfer of possession’ of unmarked explosives manufactured in, or brought into, its territory *before* the entry into force of the Convention *for that Party* (for an explanation of this, see paragraph 27 below). (Such stocks of unmarked explosives will from now on be referred to as ‘existing stocks’.) The purpose of such strict control is, as with *Article 3*, to prevent the ‘diversion’ or use of existing stocks for ‘purposes inconsistent with the objectives of this Convention’. The term ‘diversion’ refers to unlawful or unauthorised possession or use.

17. Paragraph 2 requires that existing stocks of unmarked explosives, that are not held by the military or police (i.e. commercial stocks), must either be destroyed *or* ‘consumed for purposes not inconsistent with the objectives’ of the Convention *or* marked *or* ‘rendered permanently ineffective’. Whichever is done, each Party must complete the process within three years of the Convention entering into force for that Party. The draft Convention included in this, and paragraph 3, the additional option of disposal by (unspecified) means.¹⁵³ Burying in the ground or in concrete were discussed but rejected. As a result, the *only* options for disposal of unmarked existing stocks are lawful consumption or destruction.

18. Paragraph 3 deals with existing stocks of unmarked explosives held by the military or police. Each Party must ensure that they are destroyed, consumed for purposes not inconsistent with the objectives of the Convention, marked or ‘rendered permanently ineffective’. The option chosen must be affected within 15 years of the Convention entering into force for a Party.

19. The further exception for existing stocks that have been ‘incorporated as an integral part of duly authorised military devices’ has already been mentioned in paragraph 8 above. Such devices are defined, but not exhaustively, in *Article 1(5)*. But this exception applies only to stocks which are destined to be, and are, incorporated within three years of the entry into force of the Convention for a Party (see the Technical Annex, Part 1, paragraph II(d)).

20. Paragraph 4 requires each Party to take necessary measures to ensure the destruction as soon as possible in its territory of unmarked explosives discovered there, if they are not, in effect, existing stocks (to which the first three paragraphs apply), or are not held by military or police authorities and incorporated as an integral part of duly authorised military devices when the Convention enters into force for the Party.

21. Paragraph 5 reinforces the provisions of the Technical Annex, Part 1, paragraph II, in requiring each Party to take necessary measures to exercise strict and effective control over the possession and transfer of the explosives mentioned in those provisions so as to prevent them being diverted or used for purposes inconsistent with the objectives of the Convention.

¹⁵³ Outside the offices of the United Kingdom Mission to the United Nations in New York in the late 1980s there was a warning sign: ‘Suspect packages will be DISPOSED OF BY DESTRUCTION’. Sign writers, like Dickensian conveyancers, are no doubt paid by the word.

22. Paragraph 6 requires each Party to take necessary measures to ensure the destruction as soon as possible in its territory of, first, unmarked explosives manufactured *since* the coming into force of the Convention for that Party, if they are not incorporated as an integral part of duly authorised military devices (Technical Annex, Part 1, paragraph II(d)) and, secondly, unmarked explosives which no longer fall within the scope of the Technical Annex, Part 1, paragraph II(a), (b) or (c).

ARTICLES 5 to 9 (Technical Commission)

23. These articles established the International Explosives Technical Commission to evaluate technical developments relating to the manufacture, marking and detection of plastic explosives, and to make recommendations for amendments to the Technical Annex. *Article 7* has an elaborate procedure for amending the Technical Annex. One amendment has been made and entered into force on 27 March 2002. In the list of detection agents in the Table of the Technical Annex ortho-Mononitrotoluene (o-MNT) was deleted. A new treaty would be needed to amend the rest of the Convention.

ARTICLE 10 (integral annex)

24. This provides that the Technical Annex is an integral part of the Convention.

ARTICLE 11 (disputes)

25. This is the same disputes mechanism as one finds in the other counter-terrorism conventions. A State can opt-out of it on ratification or accession (paragraph 2).

ARTICLE 12 (reservations)

26. Apart from the opt-out permitted by *Article 11(2)*, *no* reservations to the Convention are permitted.

ARTICLES 13 to 15 (final clauses)

27. If a State did not sign the Convention before its entry into force on 21 June 1998, it cannot now do so and then ratify the Convention. Instead it can become a Party by depositing an instrument of accession with the ICAO Secretary-General. The Convention will enter into force for a new Party 60 days after deposit of its instrument of ratification or accession (*Article 13(1) and (4)*). A State that has become independent may succeed formally to the Convention if the Convention had previously been extended to it. In such a case the implementing legislation should already exist. The Convention can be denounced (*Article 15*).

Implementing legislation

28. Model Legislative Provisions are at page 239 below. However, careful consideration will have to be given by each State which is considering becoming a Party to the Convention as to its precise needs for the content of the legislation.

**CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES FOR THE
PURPOSE OF IDENTIFICATION (MONTREAL CONVENTION 1991)**
Signed At Montreal, On 1 March 1991

THE STATES PARTIES TO THIS CONVENTION,

CONSCIOUS of the implications of acts of terrorism for international security;

EXPRESSING deep concern regarding terrorist acts aimed at destruction of aircraft, other means of transportation and other targets;

CONCERNED that plastic explosives have been used for such terrorist acts;

CONSIDERING that the marking of such explosives for the purpose of detection would contribute significantly to the prevention of such unlawful acts;

RECOGNIZING that for the purpose of deterring such unlawful acts there is an urgent need for an international instrument obliging States to adopt appropriate measures to ensure that plastic explosives are duly marked;

CONSIDERING United Nations Security Council Resolution 635 of 14 June 1989, and United Nations General Assembly Resolution 44/29 of 4 December 1989 urging the International Civil Aviation Organization to intensify its work on devising an international regime for the marking of plastic or sheet explosives for the purpose of detection;

BEARING IN MIND Resolution A27-8 adopted unanimously by the 27th Session of the Assembly of the International Civil Aviation Organization which endorsed with the highest and overriding priority the preparation of a new international instrument regarding the marking of plastic or sheet explosives for detection;

NOTING with satisfaction the role played by the Council of the International Civil Aviation Organization in the preparation of the Convention as well as its willingness to assume functions related to its implementation;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

For the purposes of this Convention:

1. "Explosives" mean explosive products, commonly known as "plastic explosives", including explosives in flexible or elastic sheet form, as described in the Technical Annex to this Convention.
2. "Detection agent" means a substance as described in the Technical Annex to this Convention which is introduced into an explosive to render it detectable.
3. "Marking" means introducing into an explosive a detection agent in accordance with the Technical Annex to this Convention.
4. "Manufacture" means any process, including reprocessing, that produces explosives.
5. "Duly authorized military devices" include, but are not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades and perforators manufactured exclusively for military or police purposes according to the laws and regulations of the State Party concerned.

6. "Producer State" means any State in whose territory explosives are manufactured.

ARTICLE 2

Each State Party shall take the necessary and effective measures to prohibit and prevent the manufacture in its territory of unmarked explosives.

ARTICLE 3

1. Each State Party shall take the necessary and effective measures to prohibit and prevent the movement into or out of its territory of unmarked explosives.
2. The preceding paragraph shall not apply in respect of movements for purposes not inconsistent with the objectives of this Convention, by authorities of a State Party performing military or police functions, of unmarked explosives under the control of that State Party in accordance with paragraph 1 of Article 4.

ARTICLE 4

1. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of unmarked explosives which have been manufactured in or brought into its territory prior to the entry into force of this Convention in respect of that State, so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.
2. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this Article not held by its authorities performing military or police functions are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of three years from the entry into force of this Convention in respect of that State.
3. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this Article held by its authorities performing military or police functions and that are not incorporated as an integral part of duly authorized military devices are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of fifteen years from the entry into force of this Convention in respect of that State.
4. Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives which may be discovered therein and which are not referred to in the preceding paragraphs of this Article, other than stocks of unmarked explosives held by its authorities performing military or police functions and incorporated as an integral part of duly authorized military devices at the date of the entry into force of this Convention in respect of that State.
5. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of the explosives referred to in paragraph II of Part 1 of the Technical Annex to this Convention so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.
6. Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives manufactured since the coming into force of this Convention in respect of that State that are not incorporated as specified in paragraph II (d) of Part 1 of the Technical Annex to this Convention and of unmarked explosives which no longer fall within the scope of any other sub-paragraphs of the said paragraph II.

ARTICLE 5

1. There is established by this Convention an International Explosives Technical Commission (hereinafter referred to as "the Commission") consisting of not less than fifteen

nor more than nineteen members appointed by the Council of the International Civil Aviation Organization (hereinafter referred to as "the Council") from among persons nominated by States Parties to this Convention.

2. The members of the Commission shall be experts having direct and substantial experience in matters relating to the manufacture or detection of, or research in, explosives.

3. Members of the Commission shall serve for a period of three years and shall be eligible for re-appointment.

4. Sessions of the Commission shall be convened, at least once a year at the Headquarters of the International Civil Aviation Organization, or at such places and times as may be directed or approved by the Council.

5. The Commission shall adopt its rules of procedure, subject to the approval of the Council.

ARTICLE 6

1. The Commission shall evaluate technical developments relating to the manufacture, marking and detection of explosives.

2. The Commission, through the Council, shall report its findings to the States Parties and international organizations concerned.

3. Whenever necessary, the Commission shall make recommendations to the Council for amendments to the [Technical Annex](#) to this Convention. The Commission shall endeavour to take its decisions on such recommendations by consensus. In the absence of consensus the Commission shall take such decisions by a two-thirds majority vote of its members.

4. The Council may, on the recommendation of the Commission, propose to States Parties amendments to the [Technical Annex](#) to this Convention.

ARTICLE 7

1. Any State Party may, within ninety days from the date of notification of a proposed amendment to the [Technical Annex](#) to this Convention, transmit to the Council its comments. The Council shall communicate these comments to the Commission as soon as possible for its consideration. The Council shall invite any State Party which comments on or objects to the proposed amendment to consult the Commission.

2. The Commission shall consider the views of States Parties made pursuant to the preceding paragraph and report to the Council. The Council, after consideration of the Commission's report, and taking into account the nature of the amendment and the comments of States Parties, including producer States, may propose the amendment to all States Parties for adoption.

3. If a proposed amendment has not been objected to by five or more States Parties by means of written notification to the Council within ninety days from the date of notification of the amendment by the Council, it shall be deemed to have been adopted, and shall enter into force one hundred and eighty days thereafter or after such other period as specified in the proposed amendment for States Parties not having expressly objected thereto.

4. States Parties having expressly objected to the proposed amendment may, subsequently, by means of the deposit of an instrument of acceptance or approval, express their consent to be bound by the provisions of the amendment.

5. If five or more States Parties have objected to the proposed amendment, the Council shall refer it to the Commission for further consideration.

6. If the proposed amendment has not been adopted in accordance with paragraph 3 of this Article, the Council may also convene a conference of all States Parties.

ARTICLE 8

1. States Parties shall, if possible, transmit to the Council information that would assist the Commission in the discharge of its functions under paragraph 1 of Article VI.
2. States Parties shall keep the Council informed of measures they have taken to implement the provisions of this Convention. The Council shall communicate such information to all States Parties and international organizations concerned.

ARTICLE 9

The Council shall, in co-operation with States Parties and international organizations concerned, take appropriate measures to facilitate the implementation of this Convention, including the provision of technical assistance and measures for the exchange of information relating to technical developments in the marking and detection of explosives.

ARTICLE 10

The Technical Annex to this Convention shall form an integral part of this Convention.

ARTICLE 11

1. Any dispute between two or more States Parties 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 Party may, at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.
3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary.

ARTICLE 12

Except as provided in Article 11 no reservation may be made to this Convention.

ARTICLE 13

1. This Convention shall be open for signature in Montreal on 1 March 1991 by States participating in the International Conference on Air Law held at Montreal from 12 February to 1 March 1991. After 1 March 1991 the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 3 of this Article. Any State which does not sign this Convention may accede to it at any time.
2. This Convention shall be subject to ratification, acceptance, approval or accession by States. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary. When depositing its instrument of ratification, acceptance, approval or accession, each State shall declare whether or not it is a producer State.
3. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Depositary, provided that no fewer than five such States have declared pursuant to paragraph 2 of this Article that they are producer States. Should thirty-five such instruments

be deposited prior to the deposit of their instruments by five producer States, this Convention shall enter into force on the sixtieth day following the date of deposit of the instrument of ratification, acceptance, approval or accession of the fifth producer State.

4. For other States, this Convention shall enter into force sixty days following the date of deposit of their instruments of ratification, acceptance, approval or accession.

5. As soon as this Convention comes into force, it shall be registered by the Depositary 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

The Depositary shall promptly notify all signatories and States Parties of:

1. each signature of this Convention and date thereof;
2. each deposit of an instrument of ratification, acceptance, approval or accession and date thereof, giving special reference to whether the State has identified itself as a producer State;
3. the date of entry into force of this Convention;
4. the date of entry into force of any amendment to this Convention or its [Technical Annex](#);
5. any denunciation made under Article 15; and
6. any declaration made under paragraph 2 of Article 11.

ARTICLE 15

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

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

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

DONE at Montreal, this first day of March, one thousand nine hundred and ninety-one, in one original, drawn up in five authentic texts in the English, French, Russian, Spanish and Arabic languages.

TECHNICAL ANNEX

PART 1: DESCRIPTION OF EXPLOSIVES

I The explosives referred to in paragraph 1 of Article 1 of this Convention are those that:

- a. are formulated with one or more high explosives which in their pure form have a vapour pressure less than 10-4 Pa at a temperature of 25°C;
- b. are formulated with a binder material; and
- c. are as a mixture, malleable or flexible at normal room temperature.

II The following explosives, even though meeting the description of explosive in paragraph 1 of this Part, shall not be considered to be explosives as long as they continue to be held or used for the purposes specified below or remain incorporated as there specified, namely those explosive that:

- a. are manufactured, or held, in limited quantities solely for use in duly authorized research, development or testing of new or modified explosives;
- b. are manufactured, or held, in limited quantities solely for use in duly authorized training in explosives detection and/or development or testing of explosives detection equipment;
- c. are manufactured, or held, in limited quantities solely for duly authorized forensic science purposes; or
- d. are destined to be and are incorporated as an integral part of duly authorized military devices in the territory of the producer State within three years after the coming into force of this Convention in respect of that State. Such devices produced in this period of three years shall be deemed to be duly authorized military devices within paragraph 4 of Article 4 of this Convention.

III In this Part: "duly authorized" in paragraph 2 (a), (b) and (c) means permitted according to the laws and regulations of the State Party concerned; and "high explosives" include but are not restricted to cyclotetramethylenetrinitramine (HMX), pentaerythritol tetranitrate (PETN) and cyclotrimethylenetrinitramine (RDX)

PART 2: DETECTION AGENTS [as amended: see p.228, para. 23, above]

A detection agent is any one of those substances set out in the following Table. Detection agents described in this Table are intended to be used to enhance the detectability of explosives by vapour detection means. In each case, the introduction of a detection agent into an explosive shall be done in such a manner as to achieve homogeneous distribution in the finished product. The minimum concentration of a detection agent in the finished product at the time of manufacture shall be as shown in the said Table.

Table:

<u>Name of detection agent</u>	<u>Molecular formula</u>	<u>Molecular weight</u>	<u>Minimum concentration</u>
Ethylene glycol dinitrate (EGDN)	C ₂ H ₄ (NO ₃) ₂	152	0.2% by mass
2,3-Dimethyl-2,3dinitro butane (DMNB)	C ₆ H ₁₂ (NO ₂) ₂	176	0.1% by mass
para-Mononitrololuene	C ₇ H ₇ NO ₂	137	0.5% by mass

Any explosive which, as a result of its normal formulation contains any of the designated detection agents at or above the required minimum concentration level shall be deemed to be marked.

**CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES
FOR THE PURPOSE OF DETECTION
DONE AT MONTREAL ON 1 MARCH 1991**

Entry into force: The Convention entered into force on 21 June 1998.

Status : 80 Parties.

State	Date of signature	Date of deposit of instrument of ratification, acceptance (A), approval (AA), accession (a) or succession (s)	Effective date
Afghanistan	1/3/91		
Algeria		14/11/96 (a)	21/6/98
Argentina	1/3/91	8/3/99	7/5/99
Austria	16/12/97	31/5/99	30/7/99
Azerbaijan		4/7/00 (a)	2/9/00
Bahrain		30/1/96 (a)	21/6/98
Belarus	1/3/91	6/2/02 (AA)	7/4/02
Belgium	1/3/91		
Belize	1/3/91		
Bolivia	1/3/91	1/2/02	2/4/02
Botswana		19/9/00 (a)	18/11/00
Brazil	1/3/91	4/10/01	3/12/01
Bulgaria	26/3/91	8/9/99	7/11/99
Cameroon		3/6/98 (a)	2/8/98
Canada	1/3/91	29/11/96	21/6/98
Chile	1/3/91	2/8/00	1/10/00
China	--	--	--
Colombia	13/12/91		
Costa Rica	1/3/91		
Côte d'Ivoire	1/3/91		
Cuba		30/11/01 (a)	29/1/02
Czech Republic		25/3/93 (s)	21/6/98
Denmark	1/3/91	5/10/98	4/12/98
Ecuador	1/3/91	15/12/95	21/6/98
Egypt	1/3/91	19/7/93	21/6/98
El Salvador		18/2/00 (a)	18/4/00
Eritrea		1/12/94 (a)	21/6/98
Estonia		5/3/96 (a)	21/6/98

Finland	25/3/93	5/12/01 (A)	3/2/02
France	1/3/91	21/5/97	21/6/98
Gabon	1/3/91		
Gambia		20/6/00 (a)	19/8/00
Georgia		25/4/00 (a)	24/6/00
Germany	1/3/91	17/12/98	15/2/99
Ghana	1/3/91	22/4/98	21/6/98
Greece	1/3/91	30/10/95	21/6/98
Grenada		15/01/02 (a)	16/3/02
Guatemala		26/11/97 (a)	21/6/98
Guinea	1/3/91		
Guinea-Bissau	1/3/91		
Honduras	26/3/91		
Hungary	30/10/92	11/1/94	21/6/98
India		16/11/99 (a)	15/1/00
Iceland		24/5/02 (a)	23/7/02
Israel	1/3/91		
Japan		26/9/97 (a)	21/6/98
Jordan	17/7/92	23/5/96	21/6/98
Kazakhstan		18/5/95 (a)	21/6/98
Kuwait	1/3/91	18/3/96	21/6/98
Kyrgyzstan		14/7/00 (a)	12/9/00
Latvia		17/8/99 (a)	16/10/99
Lebanon	1/3/91	26/11/97	21/6/98
Lithuania		21/11/96 (a)	21/6/98
Madagascar	1/3/91		
Maldives		22/3/99 (a)	21/5/99
Mali	1/3/91	28/9/00	27/11/00
Malta		15/11/94 (a)	21/6/98
Mauritius	1/3/91		
Mexico	1/3/91	9/4/92	21/6/98
Monaco		14/5/98 (a)	13/7/98
Mongolia		22/9/99 (a)	21/11/99
Morocco		26/5/99 (a)	25/7/99

Netherlands	2/8/91	4/5/98	3/7/98
Nicaragua	6/10/94		
Nigeria		10/5/02 (a)	9/7/02
Norway	1/3/91	9/7/92	21/6/98
Oman		13/12/01(a)	11/2/02
Pakistan	1/3/91		
Palau		30/11/01(a)	29/1/02
Panama		12/4/96 (a)	21/6/98
Peru	1/3/91	7/2/96	21/6/98
Qatar		9/11/98 (a)	8/1/99
Republic of Korea	1/3/91	2/1/02	3/3/02
Republic of Moldova		1/12/97 (a)	21/6/98
Romania		21/9/98 (a)	20/11/98
Russian Federation	1/3/91		
Saint Kitts and Nevis		9/5/02 (a)	8/7/02
Samoa		9/7/98 (a)	7/9/98
Saudi Arabia		11/7/96 (a)	21/6/98
Senegal	1/3/91		
Slovakia		20/3/95 (s)	21/6/98
Slovenia		5/6/00 (a)	4/8/00
South Africa		1/12/99 (a)	30/1/00
Spain	5/4/93	31/5/94	21/6/98
Sri Lanka		11/10/01(a)	10/12/01
Sudan		25/5/00 (a)	24/7/00
Sweden	13/11/92		
Switzerland	1/3/91	3/4/95	21/6/98
The former Yugoslav Republic of Macedonia		21/9/98 (a)	20/11/98
Togo	1/3/91		
Trinidad and Tobago		3/4/01	2/6/01
Tunisia		28/5/97 (a)	21/6/98
Turkey	7/5/91	14/12/94	21/6/98

Ukraine	1/3/91	18/3/99	17/5/99
United Arab Emirates		21/12/92 (a)	21/6/98
United Kingdom	1/3/91	28/4/97	21/6/98
United States	1/3/91	9/4/97	21/6/98
Uruguay		14/6/01 (a)	13/8/01
Uzbekistan		9/6/99 (a)	8/8/99
Zambia		31/5/95 (a)	21/6/98

**MODEL LEGISLATIVE PROVISIONS TO IMPLEMENT THE
CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES FOR THE
PURPOSE OF IDENTIFICATION**

NOTE

No specific penalties for the offences have been included because of the variation in sentencing practice between states. However the Convention requires penalties that reflect the seriousness of the offence and therefore maximum penalties should be set including, if appropriate, a life sentence.

Whereas a Convention on the Marking of Plastic Explosives for the Purpose of Identification was signed in Montreal on March 1, 1991:

And Whereas (name of country) intends acceding to the said Convention by depositing an instrument of accession with the Director General of the International Civil Aviation Organisation:

And Whereas it is necessary to make legal provision to give effect to (name of country) obligations under the said Convention:

Now therefore, be it enacted by the Parliament of (name of country) as follows:-

Short title and date of operation

1. This Act maybe cited as the Marking of Plastic Explosives Act and shall come into operation on such a date as the Minister responsible for Foreign Affairs by Order published in the Gazette, certifies as the date on which the Convention enters into force in respect of (name of country).

Interpretation

2. In this Act unless the context otherwise requires -

“Convention” means the Convention on the Marking of Plastic Explosives for the Purpose of Identification, signed in the Montreal on March 1, 1991, as amended form time to time;

“detection agent” means any of the substances set out in the Table to Part 2 of the Technical Annex to the Convention;

“duly authorized military device” includes a shell, bomb, projectile, mine, missile, rocket, charge, grenade or perforator, manufactured exclusively for military or police purposes in accordance with the law in force;

“explosive” means anything that is made, manufactured or used to produce an explosive or a detonation or pyrotechnic effect, and includes anything prescribed to be an explosive by regulations made under this Act but does

not include gases, organic peroxides or anything prescribed not to be an explosive by regulations made under this Act;

“plastic explosive” means an explosive that-

- (a) is formulated with one or more high explosives that in their pure form have a vapour pressure less than 10⁻⁴ Pa at a temperature of 25 C,
- (b) is formulated with a binder material, and
- (c) is, when mixed, malleable or flexible at normal room temperature;

“unmarked plastic explosive” mean a plastic explosive that -

- (a) does not contain a detection agent, or
- (b) at the time of manufacture, does not contain the required minimum concentration level of a detection agent as set out in the Table to Part 2 of the Technical Annex to the Convention.

Prohibition on manufacture, possession, transport import or export of unmarked plastic explosives

3. (1) No person shall manufacture unmarked plastic explosives.
- (2) It shall not be a contravention of subsection (1) for a person to manufacture unmarked plastic explosives in such quantities as are approved in writing by the {Inspector of Explosives} solely for use in training in explosives detection or in the development or testing of explosives detection equipment.
- (3) Subject to subsection (5), no person shall possess or transport unmarked plastic explosives.
- (4) It shall not be a contravention of subsection (3) for a person to possess or transport unmarked plastic explosives in such quantities as have been approved in writing by the {Inspector of Explosives} under subsection (2) solely for the uses specified in that subsection.
- (5) Where any unmarked plastic explosives have been –
 - (a) manufactured in, or
 - (b) imported into,
..... (name of country), prior to the date of coming into operation of this Act, then if, such unmarked plastic explosives are -
 - (i) held by authorities performing military or police functions and not incorporated as an integral part of a duly authorized military device, be destroyed or marked or rendered permanently ineffective, within a period of fifteen years from the date of coming into operation of this Act;
 - (ii) held by any other person, be destroyed or marked or rendered permanently ineffective, within a period of three years from the date of coming into operation of this Act.
- (6) No person shall import or export unmarked plastic explosives unless such explosives are incorporated as an integral part of a military device.

Powers of Entry

4. An officer authorized in writing by the [Inspector of Explosives] may, at all reasonable hours, enter any premises where he or she has reasonable grounds to believe that any explosives are being –

- (a) manufactured, or
- (b) kept or stored,

and may make such investigations and inquiries thereon as may be necessary to ascertain whether the provisions of this Act are being complied with. Any such officer may make inquiries from any person found on such premises, inspect any records, documents or equipment found thereon and make copies of, or take extracts from, any such record or document.

Offences

5 (1) Every person who contravenes or fails, without reasonable cause, to comply with subsection (1), or (3), or (5) or (6) of section 3 commits an offence and upon conviction shall be liable to imprisonment for a term of () years.

(2) Every person who-

- (a) resists or obstructs an officer authorized under section 4 in the exercise by that officer of the powers conferred on that officer by that section,
- (b) furnishes information which to his or her knowledge is false, in response to an inquiry made of him or her by an officer authorized under section 4 in the exercise by that officer of the powers conferred on that officer by that section; or
- (c) wilfully suppresses any material information in response to an inquiry made of him or her by an officer authorized under section 4 in the exercise by that officer of the powers conferred on that officer by that section,

commits an offence and upon conviction shall on conviction be liable to imprisonment for a term of () years.

Regulations

6. (1) The Minister may make regulations amending any definition set out section 2 and in respect of all matters which are required by this Act to be prescribed by regulation.
- (2) Every regulation made under this section shall be published in the Gazette and shall come into force on the date of such publication or on such later date as may be specified therein.

CHAPTER TWELVE

INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF TERRORIST BOMBINGS 1999 (‘Bombings Convention’)

1. The Convention was a response to the increasingly widespread use of bombs in terrorist attacks, particularly in public places. It was a US initiative, one of the more immediate reasons being the bombing of the federal building in Oklahoma City. The Convention was adopted by the United Nations General Assembly on 15 December 1997. It entered into force on 23 May 2001. As of September 2002 it had 70 Parties, including 18 Commonwealth States, and two more had signed, but not yet ratified it. The text of the Convention is at page 249 below, and the complete list of signatures, ratifications and accessions at September 2002 is at page 258 below.

The offence

2. *Article 2(1)* provides that

‘Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:

- (a) With the intent to cause death or serious bodily injury; or
- (b) With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.’

3. ‘Unlawfully’ was inserted because armed forces and police have to employ explosives and other lethal devices in the proper discharge of their duties. Whether the activities of police fall within the Convention if they use excessive force is a nice question, but although the purpose of the Convention is to deal with terrorist outrages, there does not seem to be any reason why a totally unjustified use in a confined space by police of, say, tear or CS gas might not be caught. But in practice such conduct would - or at least should - be dealt with by the courts of the State where the incident occurred.

4. The provision needs to be read with the one tucked away in *Article 19(2)*, which reads:

‘[1]The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law [i.e. the law of armed conflict/ the laws of war], which are governed by that law, are not governed by this Convention, and [2] the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.’

This so-called ‘military carve-out’ was new. Its tortuous wording reflects an intense and difficult negotiation reflecting the sharp difference of opinion on the extent to which acts by members of armed forces should be subject to the Convention. Interpretative statements about the provision made on signature or accession by Cuba, Egypt, Turkey and Ukraine illustrate this. Cuba in particular stated, *inter alia*, that the Convention applies with full

rigour to ‘activities carried out by the armed forces of one State against another State in cases in which no armed conflict exists between the two’.¹⁵⁴ This is a reference to the view of some States that in the last quarter of the 20th century the use of force by some other States has been in breach of international law.

5. The purpose of the *first limb* of the provision is to take out of the ambit of the Convention acts by armed forces done during an armed conflict, even if they may be unlawful (see also the last paragraph of the preamble to the Convention). Unlawful acts by members of armed forces are governed by the Geneva Conventions and the rest of the law of armed conflict and will continue to be dealt with in that way, not by the Convention. In the first limb, the term ‘armed forces’ is not qualified, as it is in the second limb by the addition ‘of a State’. Thus in the first limb armed forces include those covered by Protocol I to the Geneva Conventions, which applies also to armed conflicts in which peoples fight against, *inter alia*, alien occupation, and those covered by Protocol II, which applies to internal armed conflicts. The *second limb* therefore applies only to the armed forces of a State (see the definition of ‘military forces of a State in Article 1(4)) when they are not involved in an armed conflict, provided they are acting in the exercise of their official duties, not on a frolic of their own. The addition of the reference to the activities being governed by other rules of international law adds little, if anything, since the use of force by States is subject to the rules in the UN Charter and by the law of State responsibility. The result is that if there is no armed conflict, but soldiers as part of their official duty carry out an explosion in a public place in another State, and this use of force is unlawful under international law, the soldiers would not commit a Convention offence but their State would be liable for the act in international law.

6. ‘Explosive or other lethal device’ is defined in Article 1(3) as:

- ‘(a) An explosive or incendiary weapon or device that is designed or has the capability to cause death, serious bodily injury or substantial material damage; or
- (b) A weapon or device that is designed, or has the capability to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material.’

The definition is broad in scope and includes devices which, although not designed for the purpose, have the capability to cause death etc. It therefore covers, for instance, pressurised cylinders which, when used for their proper purpose, are relatively harmless, but if misused can cause considerable harm.

7. Article 1(5) defines ‘place of public use’ as

‘those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public.’

¹⁵⁴ For the full statement, and the other statements, see the status list on www.un.org.

The interpretation of this definition will depend on the circumstances. The main question is whether a place that is accessible or open to the public periodically or occasionally is covered only when it is so accessible or open. Commonsense would suggest that if the place is essentially a private house, then it is covered only on open days. Given the purpose of the Convention, one can expect courts to apply a broad interpretation.

8. *Article 1(1)* defines ‘State or government facility’ as ‘including’:

‘any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or of any intergovernmental organisation in connection with their official duties.’

The meaning is not as clear as it could be. In particular, do the last five words apply to use or occupation by all the categories of persons or only to officials and employees? Given the nature of the offence it would seem reasonable to give it a broad construction so that it applies to any building for so long as it is used or occupied by people in any of the categories, including any period, such as night time, when it may be empty.

7. *Article 1(6)* defines ‘public transportation system’ as

‘all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo.’

This is pretty comprehensive. In addition to the means of transport, this would include all buildings and other structures and equipment, such as bridges, tunnels and tracks.

8. There may of course be some overlap with the Montreal Convention and Protocol, the Diplomats Convention and Rome Convention and Protocol. But these are inevitable and are preferable to lacunae.

Accomplices and conspirators

9. *Article 2(3)(a)* follows the earlier conventions in making it an offence to be an accomplice in the commission of the offence or an attempt. *Article 2(3)(b)* is new in that it makes it an offence to organise or direct others to commit an offence or an attempt. A person who organises or directs would in most domestic laws be guilty of the principal offence. It therefore appears to have been included because of doubt whether in all legal systems a person who organises or directs others to commit an offence is necessarily a principal. It may be that the very precise terms of the offence (‘delivers, places....’) left some doubt as to whether they are broad enough to cover a person not involved in the actual, *physical* carrying out of the act. *Article 2(3)(c)* is intended to cover conspiracy. In common law countries many alleged terrorists are charged with conspiracy. The formula was also meant to reflect the civil law concept of *association malfaiteur*. In the event, it did not fully do so. The Financing Convention has a new and improved version.¹⁵⁵

10. *Article 4* requires each Party to make the offences criminal under its domestic law and impose penalties that take into account their grave nature.

¹⁵⁵ See p. 270, para. 23 below.

11. *Article 5* is new in requiring each Party to ensure that the offences, ‘in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons’, cannot in any circumstances be justified by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and are punished by penalties consistent with their grave nature. These explicit considerations reflect the principle of the earlier conventions, and seem to be designed to prevent the courts taking into account the motives of the offenders when passing sentence. The quoted words do not form part of the definition of the offence, and seem to be directed more at ensuring that courts impose tough sentences.¹⁵⁶

Single State restriction

12. *Article 3* follows *Article 13* of the Hostages Convention, and other conventions, in excluding the application of the Convention to ‘internal’ crimes - those having no international element. The Convention does not apply if the act is committed within the territory of a single Party, both the alleged offender and the victims are nationals of that Party, the alleged offender is found there, and no other Party has a basis under *Articles 6(1) or (2)* to exercise jurisdiction. But the Convention will apply if the alleged offender then flees to the territory of another Party. In these days of mass travel the victims, and even the terrorists, are often not all of the same nationality. It is therefore that much more likely that they will not all be nationals of the Party in whose territory the act was committed. But, even if there is no international element, *Articles 10 to 15* will still apply.

Establishment of jurisdiction

13. *Article 6* follows earlier conventions. Paragraph 1 requires each Party to establish its jurisdiction over offences when they are committed (a) in its territory; (b) on board a vessel flying its flag or an aircraft registered with it at the time of the offence; or (c) by one of its nationals. The nationality of the victim is immaterial.

14. Paragraph 2 draws upon *Article 5(1)* of the Hostages Convention,¹⁵⁷ but goes rather further. It authorises, but does not require, each Party to establish its jurisdiction over an offence in five other circumstances, when it is committed: (a) against one of its nationals; (b) against one of its State or government facilities (see *Article 1(1)*) abroad, including diplomatic or consular premises; (c) by a stateless person whose habitual residence is in its territory; (d) in an attempt to compel it to do or abstain from doing any act (the ‘passive personality’ or ‘protective’ principle);¹⁵⁸ or (e) on board an aircraft operated by its Government. If a Party chooses to establish its jurisdiction in accordance with any of these options it must notify the UN Secretary-General when ratifying or acceding (paragraph 3).

15. Paragraph 4 requires each Party to establish its jurisdiction where the alleged offender is present in its territory and it does not extradite to any of the Parties mentioned in paragraphs 1 or 2. This is the standard jurisdictional provision complementing the *aut dedere aut judicare* rule in *Article 8(1)*.

16. Paragraph 5 is the standard saving provision that confirms that, in addition to jurisdiction authorised by the Convention, jurisdiction can also be exercised in accordance

¹⁵⁶ They do, however, reflect a negotiating process in which some delegations would have liked some of the wording of the article included in the definition of the offences.

¹⁵⁷ See p. 143, para. 12, above.

¹⁵⁸ See p. 3, para. 7, above.

with domestic law, provided of course that the law is in conformity with customary international law.

Exercise of jurisdiction

17. *Article 7(1) and (2)* follows previous conventions, although the wording is somewhat different. Paragraph 1 provides that when a Party receives information that an offender or alleged offender may be present in the territory it must investigate the facts. Paragraph 2 provides that ‘upon being satisfied that the circumstances so warrant’, that Party must, in accordance with its law, take such other measures so as to ensure the person’s presence for the purpose of prosecution or extradition.¹⁵⁹ The two paragraphs apply to each Party, whether or not the crime was committed on its territory, and it must apply them whether or it has received a request for provisional arrest pending a formal request for extradition. However, while the Party must be satisfied that the circumstances warrant custodial measures to ensure the presence of the suspect, the Convention does not provide a similar discretion to refrain from instituting this preliminary inquiry. While a Party may trust the alleged offender not to disappear, any potential sympathy with the underlying motivation for the act will not permit it to evade its duty to conduct a proper inquiry, at the very least an examination of the evidence by police.

Aut dedere aut judicare

18. The rule in paragraph 1 of *Article 8* is the most important part of this and the other conventions (except Tokyo and Explosives), in that it ensures that alleged offenders cannot escape justice: irrespective of where the offence was committed, if an alleged offender is found in the territory of a Party it must either extradite or submit the case to its competent authorities for the purposes of prosecution. The text follows that of the other conventions.¹⁶⁰

19. Paragraph 2 is new in providing that if the law of the requested Party requires that extradition of its own nationals can only be done on condition that if convicted the person is returned to serve any sentence imposed, and such condition is agreed by the requesting Party, such conditional extradition is sufficient to discharge the obligation in paragraph 1.

Extradition and mutual legal assistance

20. *Article 9* is the standard extradition provision, being identical in substance to *Article 8* of the Hague Convention.¹⁶¹ *Article 10* follows previous conventions in requiring Parties to assist each other with investigations and criminal proceedings, including obtaining evidence under mutual legal assistance treaties or, if none, in accordance with domestic law. But *Article 11* is new in that it prohibits Parties from refusing a request for extradition, or mutual legal assistance, on the sole ground that the offence is a *political offence*, connected with such an offence, or inspired by political motives.¹⁶² This so-called ‘political exception’ must be carefully distinguished from *Article 12*, which enables mutual legal assistance or extradition to be refused if it has been requested for the purpose of prosecuting or persecuting the person for his or her political opinion.

¹⁵⁹ For details, see p. 7, para. 21, above.

¹⁶⁰ For details, see p. 8, para. 22, above.

¹⁶¹ See p. 8, paras. 24-30 above for a full explanation.

¹⁶² For an explanation of political offence, see p. 10, paras. 31-2, above.

Rights of the alleged offender

21. *Article 7(3)* follows the earlier conventions in requiring that a person detained as an alleged offender shall be entitled to communicate without delay with (in practice) his or her consul, and be visited in custody by the consul, and told of these rights. *Article 7(4)* makes explicit that, although these rights must be accorded in accordance with domestic law, full effect must be given to the rights. The State of nationality of the alleged offender has a right to invite the ICRC to communicate with and visit the person (*Article 7(5)*). *Article 14* follows *Article 8(2)* of the Hostages Convention: an alleged offender must be guaranteed fair treatment at all stages of the legal proceedings in connection with the offence. These rights are elaborated in bilateral and multilateral treaties on consular relations, such as the Vienna Convention on Consular Relations 1963,¹⁶³ and in various universal human rights treaties, such as the International Covenant on Civil and Political Rights 1966,¹⁶⁴ and in regional human rights treaties.

Notifications

22. *Article 7(6)* requires the Party which has taken an alleged offender into custody to inform certain States of the fact and the circumstances and, later, whether it intends to exercise jurisdiction. The Party that prosecutes must inform the UN Secretary-General of the outcome (*Article 16*).

Cooperation

23. *Article 13* is new. It envisages the temporary transfer of a detained or convicted person to another Party for the purpose of giving evidence, identification or otherwise assisting in obtaining evidence of an offence. The person must freely give informed consent and the authorities must agree. The provisions avoid any need for extradition in either direction. The transferred person is not liable to be prosecuted in the requesting Party for any previous act unless the transferring Party agrees.

24. *Article 15* requires the Parties to cooperate in the prevention of the offences, in particular by trying to prevent preparations to commit them, and exchanging information and co-ordinating preventive measures.

Disputes

25. *Article 20* is the standard provision for the settlement of disputes concerning the interpretation or application of the Convention. Under paragraph 2 a Party can declare on ratification or accession that it will not be bound by the provision. The reservation can be withdrawn.

Reservations

26. In addition to the right under *Article 20* to make a reservation to that article, reservations may also be made to the other articles, provided each reservation is compatible with the object and purpose of the Convention.¹⁶⁵

Accession and succession

27. The Convention is open to accession by any State which did not sign it by 31 December 1999 (*Article 21(1) and (3)*). The instrument of accession must be deposited with the UN Secretary-General (*Article 21(3)*). A Party may denounce the Convention (*Article*

¹⁶³ 596 UNTS 261 (Reg. No. 8638); UKTS (1965) 19.

¹⁶⁴ 999 UNTS 171 (Reg. No. 14668); ILM (1967), p. 1465; UKTS (1977) 6.

¹⁶⁵ See p. 11, para. 34, above.

23(1)). Alternatively, a State that has gained its independence may be able to become a Party by succession, and no new legislation should be necessary.¹⁶⁶

Implementation

28. Legislation will be needed to give effect to the Convention in domestic law. Model Legislative Provisions are at page 262 below. However careful consideration will have to be given by each State that is considering becoming a Party to the Convention as to its precise needs for the content of the legislation.

¹⁶⁶ See page 11, para. 35 above.

INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF TERRORIST BOMBING, ADOPTED BY THE GENERAL ASSEMBLY DECEMBER 15, 1997.

THE STATES PARTIES TO THIS CONVENTION,

HAVING IN MIND the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

DEEPLY CONCERNED about the worldwide escalation of acts of terrorism in all its forms and manifestations,

RECALLING the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations of 24 October 1995,

RECALLING also the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994, in which, inter alia, "the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States",

NOTING that the Declaration also encouraged States "to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter",

RECALLING General Assembly resolution 51/210 of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism annexed thereto,

NOTING that terrorist attacks by means of explosives or other lethal devices have become increasingly widespread,

NOTING also that existing multilateral legal provisions do not adequately address these attacks,

BEING CONVINCED of the urgent need to enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism and for the prosecution and punishment of their perpetrators,

CONSIDERING that the occurrence of such acts is a matter of grave concern to the international community as a whole,

NOTING that the activities of military forces of States are governed by rules of international law outside the framework of this Convention and that the exclusion of certain actions from the coverage of this Convention does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

For the purposes of this Convention

1. "State or government facility" includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.
2. "Infrastructure facility" means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel or communications.
3. "Explosive or other lethal device" means:
 - a. An explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage; or
 - b. A weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material.
4. "Military forces of a State" means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security and persons acting in support of those armed forces who are under their formal command, control and responsibility.
5. "Place of public use" means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public.
6. "Public transportation system" means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo.

ARTICLE 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:
 - a. With the intent to cause death or serious bodily injury; or
 - b. With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.
3. Any person also commits an offence if that person:
 - a. Participates as an accomplice in an offence as set forth in paragraph 1 or 2 of the present article; or
 - b. Organizes or directs others to commit an offence as set forth in paragraph 1 or 2 of the present article; or
 - c. In any other way contributes to the commission of one or more offences as set forth in paragraph 1 or 2 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

ARTICLE 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 6, paragraph 1 or paragraph 2, of this Convention to exercise jurisdiction, except that the provisions of articles 10 to 15 shall, as appropriate, apply in those cases.

ARTICLE 4

Each State Party shall adopt such measures as may be necessary:

- a. To establish as criminal offences under its domestic law the offences set forth in article 2 of this Convention;
- b. To make those offences punishable by appropriate penalties which take into account the grave nature of those offences.

ARTICLE 5

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.

ARTICLE 6

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:
 - a. The offence is committed in the territory of that State; or
 - b. The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or
 - c. The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:
 - a. The offence is committed against a national of that State; or
 - b. The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or
 - c. The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or
 - d. The offence is committed in an attempt to compel that State to do or abstain from doing any act; or
 - e. The offence is committed on board an aircraft which is operated by the Government of that State.
3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established under its domestic law in accordance with paragraph 2 of the present article. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.
4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2 of the present article.
5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

ARTICLE 7

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence as set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.
2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.
3. Any person regarding whom the measures referred to in paragraph 2 of the present article are being taken shall be entitled to:
 - a. Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;
 - b. Be visited by a representative of that State;
 - c. Be informed of that person's rights under subparagraphs (a) and (b).
4. The rights referred to in paragraph 3 of the present article shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations

must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 of the present article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 6, subparagraph 1 (c) or 2 (c), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 6, paragraphs 1 and 2, and, if it considers it advisable, any other interested States Parties, of the fact that that person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 of the present article shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

ARTICLE 8

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 6 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1 of the present article.

ARTICLE 9

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

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

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 6, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between State Parties to the extent that they are incompatible with this Convention.

ARTICLE 10

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

ARTICLE 11

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

ARTICLE 12

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

ARTICLE 13

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of testimony, identification or otherwise providing assistance in obtaining evidence for the investigation or

prosecution of offences under this Convention may be transferred if the following conditions are met:

- a. The person freely gives his or her informed consent; and
 - b. The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.
2. For the purposes of the present article:
- a. The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;
 - b. The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;
 - c. The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;
 - d. The person transferred shall receive credit for service of the sentence being served in the State from which he was transferred for time spent in the custody of the State to which he was transferred.
3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

ARTICLE 14

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.

ARTICLE 15

States Parties shall cooperate in the prevention of the offences set forth in article 2, particularly:

- a. By taking all practicable measures, including, if necessary, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or engage in the perpetration of offences as set forth in article 2;
- b. By exchanging accurate and verified information in accordance with their national law, and coordinating administrative and other measures taken as appropriate to prevent the commission of offences as set forth in article 2;
- c. Where appropriate, through research and development regarding methods of detection of explosives and other harmful substances that can cause death or

bodily injury, consultations on the development of standards for marking explosives in order to identify their origin in post-blast investigations, exchange of information on preventive measures, cooperation and transfer of technology, equipment and related materials.

ARTICLE 16

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

ARTICLE 17

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

ARTICLE 18

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

ARTICLE 19

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

ARTICLE 20

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time 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 application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 of the present article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

ARTICLE 21

1. This Convention shall be open for signature by all States from 12 January 1998 until 31 December 1999 at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE 22

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

ARTICLE 23

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

ARTICLE 24

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

**INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF TERRORIST
BOMBINGS**
Signed at New York, 15 December 1997

Entry into force: 23 May 2001, in accordance with Article 22 (1).

Status: Signatories: 58 ,Parties: 70.

State	Signature	Ratification, Acceptance (A), Approval (AA), Accession (a)
Albania		22 Jan 2002 a
Algeria	17 Dec 1998	8 Nov 2001
Argentina	2 Sep 1998	
Australia		9 Aug 2002 a
Austria	9 Feb 1998	6 Sep 2000
Azerbaijan		2 Apr 2001 a
Belarus	20 Sep 1999	1 Oct 2001
Belgium	12 Jan 1998	
Belize		14 Nov 2001 a
Bolivia		22 Jan 2002 a
Botswana		8 Sep 2000 a
Brazil	12 Mar 1999	23 Aug 2002
Brunei Darussalam		14 Mar 2002 a
Bulgaria		12 Feb 2002 a
Burundi	4 Mar 1998	
Canada	12 Jan 1998	3 Apr 2002
Cape Verde		10 May 2002 a
Chile		10 Nov 2001 a
China <u>1</u>		13 Nov 2001 a
Comoros	1 Oct 1998	
Costa Rica	16 Jan 1998	20 Sep 2001
Côte d'Ivoire	25 Sep 1998	13 Mar 2002
Cuba		15 Nov 2001 a
Cyprus	26 Mar 1998	24 Jan 2001
Czech Republic	29 Jul 1998	6 Sep 2000

Denmark ²	23 Dec 1999	31 Aug 2001
Egypt	14 Dec 1999	
Estonia	27 Dec 1999	10 Apr 2002
Finland	23 Jan 1998	28 May 2002 A
France	12 Jan 1998	19 Aug 1999
Germany	26 Jan 1998	
Ghana		6 Sep 2002 a
Greece	2 Feb 1998	
Grenada		13 Dec 2001 a
Guatemala		12 Feb 2002 a
Guinea		7 Sep 2000 a
Hungary	21 Dec 1999	13 Nov 2001
Iceland	28 Sep 1998	15 Apr 2002
India	17 Sep 1999	22 Sep 1999
Ireland	29 May 1998	
Israel	29 Jan 1999	
Italy	4 Mar 1998	
Japan	17 Apr 1998	16 Nov 2001 A
Kenya		16 Nov 2001 a
Kyrgyzstan		1 May 2001 a
Lao People's Democratic Republic		22 Aug 2002 a
Lesotho		12 Nov 2001 a
Libyan Arab Jamahiriya		22 Sep 2000 a
Lithuania	8 Jun 1998	
Luxembourg	6 Feb 1998	
Madagascar	1 Oct 1999	
Maldives		7 Sep 2000 a
Mali		28 Mar 2002 a
Malta		11 Nov 2001 a
Monaco	25 Nov 1998	6 Sep 2001
Mongolia		7 Sep 2000 a
Myanmar		12 Nov 2001 a

Nepal	24 Sep 1999	
Netherlands ³	12 Mar 1998	7 Feb 2002 A
Norway	31 Jul 1998	20 Sep 1999
Pakistan		13 Aug 2002 a
Palau		14 Nov 2001 a
Panama	3 Sep 1998	5 Mar 1999
Peru		10 Nov 2001 a
Philippines	23 Sep 1998	
Poland	14 Jun 1999	
Portugal	30 Dec 1999	10 Nov 2001
Republic of Korea	3 Dec 1999	
Romania	30 Apr 1998	
Russian Federation	12 Jan 1998	8 May 2001
Rwanda		13 May 2002 a
Saint Kitts and Nevis		16 Nov 2001 a
San Marino		12 Mar 2002 a
Slovakia	28 Jul 1998	8 Dec 2000
Slovenia	30 Oct 1998	
South Africa	21 Dec 1999	
Spain	1 May 1998	30 Apr 1999
Sri Lanka	12 Jan 1998	23 Mar 1999
Sudan	7 Oct 1999	8 Sep 2000
Sweden	12 Feb 1998	6 Sep 2001
Tajikistan		29 Jul 2002 a
The Former Yugoslav Republic of Macedonia	16 Dec 1998	
Togo	21 Aug 1998	
Trinidad and Tobago		2 Apr 2001 a
Turkey	20 May 1999	30 May 2002
Turkmenistan	18 Feb 1999	25 Jun 1999

Uganda	11 Jun 1999	
Ukraine		26 Mar 2002 a
United Kingdom of Great Britain and Northern Ireland	12 Jan 1998	7 Mar 2001
United States of America	12 Jan 1998	26 Jun 2002
Uruguay	23 Nov 1998	10 Nov 2001
Uzbekistan	23 Feb 1998	30 Nov 1998
Venezuela	23 Sep 1998	
Yemen		23 Apr 2001 a

MODEL LEGISLATIVE PROVISIONS FOR IMPLEMENTATION OF THE INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF TERRORIST BOMBINGS

NOTE

No specific penalties for the offences have been included because of the variation in sentencing practice between states. However the Convention requires penalties that reflect the seriousness of the offence and therefore maximum penalties should be set including, if appropriate, a life sentence.

Whereas the International Convention for the Suppression of Terrorist Bombings was adopted by the General Assembly of the United Nations on December 15 1997:

And Whereas (name of country) intends acceding to the said Convention by depositing an instrument of accession with the Secretary General of the United Nations:

And Whereas it is necessary to make legal provision to give effect to (name of country) obligations under the said Convention:

Now therefore, be it enacted by the Parliament of (name of country) as follows :-

Short Title and Date of Operation

1. This Act may be cited as the Suppression of Terrorist Bombings Act and shall come into operation on such date as the Minister (responsible for Foreign affairs) by Order published in the Gazette, certifies as the date on which the Convention enters into force in respect of (name of country).

Interpretation

2. In this said Act unless the context otherwise requires –

“Convention” means the International Convention for the Suppression of Terrorist Bombings adopted by the General Assembly of the United Nations on December 15, 1997;

“Convention State” means a State declared by the Minister (responsible for Foreign Affairs), by Order published in the Gazette, to be a party to the Convention;

“explosive or other lethal device” means –

(a) an explosive or other incendiary weapon or device –

- (i) that is designed, or
- (ii) that has the capability,

to cause death, serious bodily injury or substantial material damage; or

- (b) a weapon or device –
- (i) that is designed, or
 - (ii) that has the capability,
- to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents, toxins or similar substances or radiation or radioactive materials;
- “infrastructure facility” means any publicly owned facility providing or distributing services for the benefit of the public, such as water, energy, fuel or communications;
- “place of public use” means those parts of any building, land, street or waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and includes any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public;
- “public transportation system” means all facilities, conveyances and instrumentalities, whether public or privately owned , that are used in or for publicly available services for the transportation of persons or cargo;
- “state or government facility” includes any permanent or temporary facility or conveyance that is used or occupied by –
- (a) a representative of any Government;
 - (b) the Head of State of any country;
 - (c) the Prime Minister or Minister of any country;
 - (d) a member of the legislature of any country;
 - (e) a Judge of any country;
 - (f) an official or employee of a Government or any other inter governmental Organisation,
in connection with his or her official duties.

Offences

3. (1) Every person who intentionally, delivers or places, discharges or detonates an explosive or other lethal device in, into or against -
- (a) a place of public use,
 - (b) a state or government facility,
 - (c) a public transportation system,
 - (d) an infrastructure facility,
- with intent to –
- (i) cause death or serious bodily injury,

- (ii) cause extensive damage to such place, facility or system, and where such destruction results in or is likely to result in major economic loss,
- commits an offence and upon conviction shall be liable to imprisonment for a term of () years.
- (2) Every person who-
- (a) organises or directs others to commit,
 - (b) attempts to commit,
 - (c) conspires to commit,

an offence under subsection (1) commits an offence and upon conviction shall be liable to imprisonment for a term of () years.

Jurisdiction

NOTE

The Convention contains mandatory and discretionary provisions regarding jurisdiction. In section 4 below, all the basis of jurisdiction mentioned in the Convention are included with those that are discretionary in italics.

The Convention contains a “prosecute or extradite” obligation with respect to the offences. In order to meet this requirement, a State must have the jurisdiction to prosecute an offence where the person is present on that State’s territory, regardless of the fact that no basis of jurisdiction set out in 4 (2) (a) – (h) exists. In order to meet this obligation, the State needs to have jurisdiction arising from the person’s presence in that state. One way to incorporate that jurisdiction is through a universal jurisdiction clause based on the presence of the person. This has been reflected in subsection 4(2) (i). If that is considered overly broad, the bracketed and italicized language at the end of 4(2) (i) can be added limiting the application of the section to cases where extradition is not possible. While this second approach is more limited in scope, there may be problems of proof arising from the need to establish that extradition is not possible.

4. (1) All offences under Section 3 shall be tried by the High Court (highest court exercising original criminal jurisdiction).
- (2) The High Court (highest court exercising original criminal jurisdiction), shall have jurisdiction to try an offence under Section 3 in every case where the act constituting the offence is committed –
 - (a) in(name of country);
 - (b) on board a ship or aircraft registered in(name of country);
 - (c) by a national of(name of country), whether the act constituting the offence is committed within, or outside(name of country);

- (d) against a national of (name of country, whether the act constituting the offence is committed within or outside (name of country);
- (e) against a embassy, diplomatic or consular premises or any other property of the Government of (name of country) in any other country;
- (f) by a stateless person whose habitual residence is in (name of country), whether the act constituting the offence is committed within or outside (name of country);
- (g) in an attempt to compel the Government of (name of country), to do, or abstain from doing, any act, whether the act constituting the offence is committed within or outside (name of country);
- (h) on board and aircraft operated by the Government of (name of country);
- (i) is committed by a person who is ,after the commission of the offence, present in (name of country), whether the act constituting the offence is committed within or outside (name of country) [and he or she cannot be extradited to a foreign state having jurisdiction over the offence.]

Extradition

- 5 (1) The offences described in section 3 shall be deemed to be extraditable offences under the Extradition Act, and accordingly, the provisions of that Act shall apply to, and in relation to, extradition in respect of those offences.
- (2) Where there is, on the date on which this Act comes into operation, an extradition arrangement in force between the Government of (name of country) and a Convention State, such arrangement shall, for the purposes of the Extradition Act, be deemed to include provision for extradition in respect of the offences described in Section 3.
- (3) Where there is no extradition arrangement between the Government of (name of country) and a Convention State, the Minister (of Foreign Affairs) may, by Order published in the Gazette, treat the Convention, for the purposes of the Extradition Act, as an extradition arrangement between the Government of (name of country) and such Convention State providing for extradition in respect of the offences described in section 3.
- (4) Where the Government of (name of country) accedes to request by a Convention State for the extradition of a person accused of an offence described in section 3, the act constituting such offence shall, for the purposes of the Extradition Act, be deemed to have been committed not only in the place where it was committed but also within the jurisdiction of the requesting Convention State.
- (5) Notwithstanding anything in the Extradition Act, an offence described in Section 3 shall, for the purposes of that Act, be deemed not to be an offence of a political character or an offence connected with a political offence or an offence motivated by political motives, for the purpose only of the extradition of a person accused of any such offence as between the Government of (name of country) and a Convention State.

- (6) Notwithstanding anything in the Mutual Assistance Act, an offence described in Section 3 shall, for the purposes of that Act, be deemed not to be an offence of a political character or an offence motivated by political motives, for the purpose only of mutual assistance with respect to any such offence as between the Government of (name of country) to a Convention state.

NOTE

Subparagraphs 5 and 6 are only required if the relevant extradition and mutual assistance laws include political offence as a ground of refusal.

6. (1) Where (name of country) approves a request from a Convention State seeking the temporary transfer of a person in custody in (name of country) to the Convention State to testify or assist an investigation or proceeding relating to a Convention offence, the (Attorney General or other appropriate authority) may make an application to the court for a transfer.
 - (2) The application shall specify:
 - (a) the name and location of the detained person;
 - (b) the period of time for which the person is to be transferred;
 - (c) the country to which the person is to be transferred;
 - (d) the person or class of person into whose custody the person is to be delivered for the purpose of the transfer; and
 - (e) the purpose of the transfer.
 - (3) If the judge hearing an application brought pursuant to section 1 is satisfied that the detained person consents to the transfer and the transfer is for a fixed period, the judge shall make a transfer order, including any conditions he or she considers appropriate.
 - (4) Notwithstanding any provision in the (Immigration Act or other similar legislation), where a request has been made by (name of country) for a person detained in a Convention State to be temporarily transferred to (name of country) to testify or assist an investigation or proceeding relating to an offence under this Act, the (Minister, Attorney General or other appropriate authority) may authorize the detained person to enter (name of country) to remain in a fixed location or locations for a specified period of time.
 - (5) The (Minister, Attorney General or other appropriate authority) may vary the terms of an authorization issued under sub-paragraph (4).
 - (6) A person who is in (name of country) pursuant to a request made by (name of country) shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in (name of country) in respect of any acts or convictions anterior to his or her departure from the territory of the Convention State from which such person was transferred.

NOTE

Paragraph 6 is only required if there is no general mutual assistance legislation in place or that legislation does not provide for temporary transfer.

CHAPTER THIRTEEN

INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM 1999 (‘Financing Convention’)

1. Previous conventions dealt with tangible terrorist crimes, such as hijacking, hostage-taking and placing bombs in public places. The purpose of this Convention is to help prevent terrorism by cutting off the funds which terrorists need in order to carry out their crimes. Thus the Convention deals with matters which are at least once removed from terrorist acts, the provisions in earlier conventions about being an accomplice to terrorist acts not having been intended to cover financing. The Convention offences are therefore *principal*, not subsidiary, offences. This new departure caused some difficulties in the negotiations and drafting.¹⁶⁷

2. The Convention was adopted by the United Nations General Assembly on 9 December 1999 and entered into force on 10 April 2002. As of September 2002 it had 44 Parties, including 12 Commonwealth States. The text of the Convention is at page 274 below. The complete list of signatures, ratifications and accessions is at page 286 below.

3. The Convention follows closely the Bombings Convention with respect to provisions common to both conventions, and the reader is referred to the commentary on them in the previous chapter. Only provisions which differ from those in the Bombings Convention, or are new, will be described. (A comparative table of the articles of both Conventions, whether or not they are the same in substance, is at page 304 below.)

Definitions

4. The definition of ‘funds’ was drawn deliberately wide so as to leave no loophole for bankers to exploit. The assets specifically mentioned are only examples, the list not being exhaustive. It was important to provide that it does not matter how the assets are acquired, lawfully or unlawfully. Since funds supplied to terrorists may well have been acquired lawfully, one needed to avoid giving any impression that the Convention was concerned only with assets acquired unlawfully (especially given the inclusion of ‘unlawfully’ in the definition of the offence in *Article 2(1)*, see paragraph 11 below). The first, general part of the definition was taken from *Article 1(g)* of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna Drugs Convention).¹⁶⁸

5. The definition of ‘a State or governmental facility’, taken word for word from *Article 1(1)* of the Bombings Convention, is relevant only to *Article 7(2)(b)* (see paragraph 29 below).

6. The definition of ‘proceeds’ relates only to *Article 8* (see paragraph 32 below).

¹⁶⁷ For a more detailed account, see A. Aust, ‘Counter-Terrorism – A New Approach’, Max Planck Yearbook of United Nations Law (2001), pp. 285-306. The author represented the United Kingdom in the negotiations.

¹⁶⁸ UNTS Reg. No. 27627; ILM (1989), p. 493; UKTS (1992) 11.

The scope of the Convention

7. The scope of the Convention is defined by the offence established by *Article 2*. Note. Throughout the Convention the offence is referred to simply as an offence ‘*set forth in Article 2*’, but, in this chapter it will, for even greater simplicity, be referred to as the ‘*financing offence(s)*’. Offences under the existing conventions, listed in the Annex to the Convention, or acts coming within the mini-definition of terrorism (see paragraphs 20 to 22 below), are happily referred to in the Convention as ‘*offences referred to in Article 2, paragraph 1, subparagraphs (a) and (b)*’. In this chapter they are referred to as ‘*terrorist offences*’.)

8. Paragraph 1 of Article 2 provides that an offence is committed if

‘any person ... by any means, directly or indirectly, unlawfully or wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out’

an act defined in subparagraphs (a) or (b).

‘any person’

9. As in the other conventions, this term means any natural person, whether acting in a private or public or governmental capacity. But, *Article 5* necessarily extends, for the first time in these conventions, the scope of the Convention to legal persons (see paragraphs 25-27 below).

‘by any means, directly or indirectly’

10. The means by which the funds are got to the terrorist are irrelevant so long as the person providing them - whether directly or as an intermediary - has the necessary intention or knowledge.

‘unlawfully and wilfully’

11. Since the offence consists of providing funds for terrorism, wilfully and with the necessary intention or knowledge, it may seem strange to include the concept of ‘unlawfully’. It was necessary in the Bombing Convention because using explosive devices in public places can sometimes be lawful, but the situation is very different with financing. Nevertheless, it was agreed to include ‘unlawfully’ since undercover police might wish to give money to suspected terrorists as part of a plan to infiltrate them. There was also felt to be a need to cover the possibility that a donation might have the unintended result of funding terrorism when an organisation has both peaceful aims (health services) and terrorist activities. National liberation movements were cited.

12. The word ‘wilfully’ was used only to emphasise that that the financing has to be done deliberately, not accidentally or negligently, though the elements of intention or knowledge should cover the point anyway. The concepts in the Convention were shockingly new to some of the negotiators, and in places the wording carries a distinct sense of belt and braces.

‘provides or collects funds’

13. This formulation is designed to protect the innocent receiver of funds destined for terrorists, although, as before, the elements of intention or knowledge probably afford enough protection.

‘with the intention that they should be used or in the knowledge that they are to be used’
14. It had been proposed that to prove the necessary intention or knowledge it would be sufficient to show that the provision of funds was done in circumstances where there was a reasonable suspicion that they would be used for terrorist purposes, unless the accused could prove otherwise. Although such reverse evidentiary burdens of proof are not uncommon in drugs and terrorism legislation,¹⁶⁹ it was not accepted

15. Paragraph 3 makes it clear that it is not necessary to prove that the funds were ‘actually used’ to carry out a financing offence. This is an essential element. Whereas proving that a person supplied the gun that was used in a terrorist attack is reasonably easy, it is very hard to prove that a particular sum of money was actually used to finance a particular terrorist offence, or even category of offence. Paragraph 3 therefore avoids the need to prove that the accused knew or intended that the funds would be used to finance a specific act or type of terrorism.

16. Although there was a proposal to include an express reference to the financing of preparations for terrorist acts, since most of the money is spent on preparations, the design of paragraphs 1 and 3 show that they also cover the financing of preparatory work.

Subparagraph 1(a)

17. This is the first half of the provision identifying the acts the financing of which constitutes a financing offence. The acts are those which constitute offences under the treaties listed in the Annex to the Convention. This lists nine universal treaties: the Hague Convention, the Montreal Convention (and Protocol), the Diplomats Convention, the Hostages Convention, the Nuclear Convention, the Rome Convention (and Protocol) and the Bombing Convention. Given their different nature, the Tokyo and Explosives Conventions were not included. The offences include all offences under the conventions, including ancillary offences such as attempts and complicity.

18. Paragraph 2 was inserted because not all States which become Parties to the Convention will necessarily be parties to all nine conventions, and becoming a Party to the Convention will *not* make them parties to the other conventions. But here might have been political problems for some States in becoming a Party to a convention which listed all nine conventions when they are not bound by all of them. Paragraph 2 therefore gives such a State the option, when consenting to be bound by the Convention in accordance with *Article 25(2) and (3)*, to make a declaration that, in the application of the Convention to *that* State, any of the nine conventions to which it is not bound shall be deemed not to be included in the Annex. So far four declarations have been made. Once such a Party becomes bound by any of those conventions, to that extent the declaration ceases to have effect. The declaration can also be made in the unlikely event that a Party to the Convention ceases to be bound to any of the nine conventions.

19. *Article 23* provides a (tacit) procedure by which further conventions can be added to the Annex.

¹⁶⁹ See, for example, the United Kingdom Terrorism Act 2000, section 57(1) and (2).

Subparagraph 1(b) ('the mini-definition of terrorism')

20. Since the nine listed conventions do not cover the whole range of terrorist crimes, it was felt necessary to fill that void by including what is, in effect, a mini-definition of terrorism. The purpose is only to enlarge the scope of the new Convention to include the financing of almost all acts of terrorism. It leads to the rather odd result that *financing* acts covered by the mini-definition will be an offence under the Convention, even though most of the acts themselves will not be offences under the other conventions, though they may, of course, be offences under domestic law.

21. The mini-definition reads

‘Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or abstain from doing any act.’

This is a mixture of several definitions, or attempted definitions, of terrorism and bits of the earlier conventions. Its convoluted wording also reflects difficult negotiations. Although a few States remained concerned that the definition should not inhibit the financing of legitimate acts of resistance against occupation or oppression, in the end no-one voted against adoption of the Convention, and only Syria and Lebanon abstained.

22. Although a mini-definition, it is potentially quite wide ('*Any other act* intended to cause death or serious bodily injury'), and will therefore overlap with some acts coming within the nine conventions. The mini-definition emphasises the 'purpose' of the act, so distinguishing the acts from 'ordinary' crimes. This is important since terrorist offences, by their nature, involve the commission of ordinary crimes such as murder, grievous bodily harm, kidnapping, assault, criminal damage etc. Yet the references to the 'nature or context' of the act shows that the purpose must be judged objectively. The purpose is, however, limited to the intimidation of a 'population' or the compulsion of a government or international organisation. The term 'population' is not defined, but may be interpreted as 'the public or a section of the public'.¹⁷⁰ The provision should be compared with *Article 1(1)* of the Hostages Convention (see page 142, para. 5 above). As we shall see, the offence has, for the purposes of extradition or mutual legal assistance, no political exception.

Ancillary offences

23. *Article 2(4) and (5)*, taken from *Article 2(2) and (3)* of the Bombings Convention, contains the usual provisions on attempts, accomplices and organisers etc. But subparagraph (c) improves upon the equivalent provision in the Bombings Convention, which was criticised for not reflecting accurately the differences between the common law concept of conspiracy and the civil law concept of *association malfaiteur*. At the suggestion of bilingual and bi-legal Canada, the provision was therefore split into two sub-subparagraphs based closely on *Article 25(3)(d)* of the Statute of the International Criminal Court 1998.¹⁷¹ The first embodies the civil law concept and the second the common law

¹⁷⁰ See section 1(1)(b) of the United Kingdom Terrorism Act 2000. Section 1 does not create an offence of terrorism, it is only a definition for the purposes of the Act. It is particularly important for the provisions on terrorist funds and proscription of terrorist organisations.

¹⁷¹ ILM (1998), p. 1002.

concept. The two paragraphs are connected by ‘or’, to indicate that a Party can choose which one to apply.

Article 3

24. In contrast with Article 3 of the Bombings Convention, this omits any reference to victims, since the commission of an offence under the Convention can have only an indirect effect on the victim of a terrorist offence, and proving a causal connection between an offence of financing and a terrorist offence is very difficult (see paragraph 15 above).

Legal persons

25. *Article 5* is totally new. Although under the other conventions a responsible official of a legal person could commit an offence as part of his duties, the legal person could not. But that would not have been enough for the new Convention, since the offences under it are likely to be committed using banks and other financial institutions. When the transfer of money is done by a bank with the help of a person responsible for its management or control who knows it will be used for terrorism, it is important that the bank should be held accountable. The Convention, or rather the domestic law implementing it, should serve as a serious deterrent.

26. It is trite English law that when legislation makes it an offence for a ‘person’ to do an act, this includes a corporation, unless a contrary intention appears from the legislation. A contrary intention can be inferred where the nature of the act, such as bigamy, could not be committed by a controlling officer in the course of business.¹⁷² Although the concept of the vicarious liability of corporations is developing not only in common law systems, and varies from State to State, some States still do not allow any legal persons to be prosecuted. Thus, the article makes it clear that making a ‘legal entity’ liable must be done in accordance with the domestic legal principles of each Party, and Parties have the option of imposing criminal, civil or administrative liability. The obligation is limited to legal entities located in the territory of a Party or organised under its laws, i.e. carrying on business or incorporated there.

27. The entity does not have to benefit from the offence, but liability is dependent on a person ‘responsible for the management or control’ of the entity having ‘in that capacity’ committed a financing offence. Thus, first, a relatively senior manager, not a clerk (today so many bank clerks are called managers), must have done the act. Secondly, if, as is likely these days, he or she used the bank’s computer system to transfer money for terrorists, even though he or she was not authorised to do so the bank also would commit an offence. This is because he or she would have done the act by virtue of employment with the bank which gave him or her access to the system. It could not be said to be a private act. The paragraph requires that liable entities must be subject to ‘effective, proportionate [i.e. large] and dissuasive [large again] criminal, civil or administrative sanctions’, including - rather superfluously in the circumstances – ‘monetary sanctions’.

Non-discrimination

28. *Article 6* follows Article 5 of the Bombings Convention, though omits the reference to acts intended to provoke a state of terror, since that would not be appropriate in the context of this Convention.

¹⁷² See J. Smith and B. Hogan, *Criminal Law* (1999), pp. 179-187.

Establishment of jurisdiction

29. *Article 7* follows Article 6 of the Bombings Convention, except that (optional) subparagraphs 2(a)(b) and (c) permit a Party to establish its jurisdiction over a financing offence which ‘was directed towards or resulted in the carrying out of [a terrorist offence]’. Without these quoted words the three subparagraphs would be meaningless, since one cannot commit a financing offence ‘against a national of the Party’. But proving the causal connection in the three subparagraphs between the purpose of the financing offence and the terrorist offence may be difficult (see paragraph 15 above about Article 2(3)). Subparagraph 2(a) also covers the financing of a *terrorist* offence that is carried out in the territory of a Party. This is not of course the same as subparagraph 1(a) which deals with a *financing* offence committed in the territory of a Party.

30. Paragraph 5 is not found in the Bombings Convention. If more than one Party claims jurisdiction, it encourages them to reach a satisfactory solution.

31. Paragraph 6 begins with a saving provision not found in the Bombings Convention: ‘Without prejudice to the norms of general international law’. The paragraph, which is common to the conventions confirms merely that the Convention does not exclude any criminal jurisdiction under domestic law. The addition therefore states the obvious, is innocuous, and does not affect the rest of the paragraph (and was added as a political sop).

Seizure etc. of funds

32. *Article 8* does four things. First, it requires each Party to take appropriate measures for the identification, detection and freezing or seizure of funds used or allocated for the purpose of committing financing offences, and for the eventual forfeiture of such funds. This applies also to the ‘proceeds’ derived from such offences. ‘Proceeds’ is defined in Article 1(3) as meaning any funds derived from or obtained, directly or indirectly, through the commission of a financing offence, and could include interest accrued while the money was on deposit pending transfer. Secondly, it encourages Parties to enter into bilateral agreements on the sharing of funds derived from forfeitures. Sometimes one State will forfeit funds as the result of a tip-off by another State, and it is customary for the two States to agree on how the amount recovered should be shared between the two States. Thirdly, it encourages each Party to establish mechanisms by which forfeited funds could be used to compensate victims of terrorism. Fourthly, the three above provisions must be carried out without prejudice to the rights of third parties, such as the innocent buyer of assets derived from the financing of terrorism. The measures are to be taken in accordance with each Party’s ‘domestic legal principles’, so leaving Parties a degree of flexibility as to implementation.

Mutual legal assistance

33. Whereas paragraphs 1 and 5 of Article 12 are the same in substance as Article 10(1) and (2) of the Bombing Convention, paragraphs 2, 3 and 4 are new and reflect concerns that, because of the serious nature of financing offences, banking evidence of them should not be given special protection. Paragraph 2 is the most significant in providing that a request for mutual legal assistance cannot be refused on the ground of bank secrecy, and it applies to all aspects of the confidentiality of customers’ accounts, not only ‘secret’ or ‘numbered’ accounts. Such provisions are increasingly being agreed in the struggle against money-laundering and drug-trafficking. Paragraph 2 was based on Article 7(5) of the Vienna Drugs

Convention 1988.¹⁷³ But paragraph 2 is balanced by paragraph 3 which restricts the use of information or evidence to those matters for which they were requested, unless prior consent is given for use for other purposes. Paragraph 4 envisages the establishment of mechanisms by which Parties can share information or evidence necessary for establishing the liability of legal entities.

Not fiscal offences

34. *Article 13* provides that none of the financing offences shall, for the purpose of extradition or mutual legal assistance, be regarded as a fiscal offence; and any such request cannot be refused on the *sole* ground that it concerns a fiscal offence. In this context, ‘fiscal’ means relating to money or public revenue. Tax evasion is a typical fiscal offence, for which a person cannot usually be extradited or be the subject of mutual legal assistance. The provision was drawn from Article 1 of the Additional Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters 1978.¹⁷⁴

Co-operation in prevention

35. *Article 18* is entirely new since it is relevant only to financial offences. It contains detailed provisions intended to encourage further practical co-operation between the Parties to prevent and counter preparations for terrorist financing, whether inside or outside their territory. The suggested measures are based on ‘The Forty Recommendations’ of the Financial Action Task Force (FATF).¹⁷⁵ Although expressed as obligations, they are only obligations to ‘co-operate’. Furthermore, they are qualified by phrases such as ‘shall consider’. Nevertheless, such measures, if adopted and properly implemented, will be a valuable means of limiting the access of terrorists to funds.

Ratification and accession

36. Those States which signed the Convention can ratify it. Those which did not sign - and it is now too late to sign - can accede instead. In both cases, the necessary implementing legislation must be enacted beforehand.

Implementing legislation

37. Model Legislative Provisions are at page 291 below. However careful consideration will have to be given by each State that is considering becoming a Party to the Convention as to its precise needs for the content of the legislation.

¹⁷³ UNTS Reg. No. 27627; ILM (1989), p. 493; UKTS (1992) 26.

¹⁷⁴ ILM (1978), p 801; UKTS (1992) 24.

¹⁷⁵ See www.oecd.org/fatf/40Recs_en.htm

**INTERNATIONAL CONVENTION ON THE SUPPRESSION OF
THE FINANCING OF TERRORISM**
Signed on December 9, 1999

THE STATES PARTIES TO THIS CONVENTION,

BEARING IN MIND the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

DEEPLY CONCERNED about the worldwide escalation of acts of terrorism in all its forms and manifestations,

RECALLING the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, contained in General Assembly resolution 50/6 of 24 October 1995,

RECALLING ALSO all the relevant General Assembly resolutions on the matter, including resolution 49/60 of 9 December 1994 and its annex on the Declaration on Measures to Eliminate International Terrorism, in which the States Members of the United Nations solemnly reaffirmed their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States,

NOTING that the Declaration on Measures to Eliminate International Terrorism also encouraged States to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter,

RECALLING General Assembly resolution 51/210 of 17 December 1996, paragraph 3, subparagraph (f), in which the Assembly called upon all States to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organizations, whether such financing is direct or indirect through organizations which also have or claim to have charitable, social or cultural goals or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering, including the exploitation of persons for purposes of funding terrorist activities, and in particular to consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds,

RECALLING ALSO General Assembly resolution 52/165 of 15 December 1997, in which the Assembly called upon States to consider, in particular, the implementation of the measures set out in paragraphs 3 (a) to (f) of its resolution 51/210 of 17 December 1996,

RECALLING FURTHER General Assembly resolution 53/108 of 8 December 1998, in which the Assembly decided that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 should elaborate a draft international convention for

the suppression of terrorist financing to supplement related existing international instruments,

CONSIDERING that the financing of terrorism is a matter of grave concern to the international community as a whole,

NOTING that the number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain,

NOTING ALSO that existing multilateral legal instruments do not expressly address such financing,

BEING CONVINCED of the urgent need to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

For the purposes of this Convention:

1. “Funds” means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit.
2. “State or governmental facility” means any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.
3. “Proceeds” means any funds derived from or obtained, directly or indirectly, through the commission of an offence set forth in article 2.

ARTICLE 2

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

- a. An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or
- b. Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

2.
 - a. On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (a). The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact;
 - b. When a State Party ceases to be a party to a treaty listed in the annex, it may make a declaration as provided for in this article, with respect to that treaty.
3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraphs (a) or (b)
4. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.
5. Any person also commits an offence if that person:
 - a. Participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this article;
 - b. Organizes or directs others to commit an offence as set forth in paragraph 1 or 4 of this article;
 - c. Contributes to the commission of one or more offences as set forth in paragraphs 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - i Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or
 - ii Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.

ARTICLE 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State and no other State has a basis under article 7, paragraph 1, or article 7, paragraph 2, to exercise jurisdiction, except that the provisions of articles 12 to 18 shall, as appropriate, apply in those cases.

ARTICLE 4

Each State Party shall adopt such measures as may be necessary:

- a. To establish as criminal offences under its domestic law the offences set forth in article 2;
- b. To make those offences punishable by appropriate penalties which take into account the grave nature of the offences.

ARTICLE 5

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal

entity has, in that capacity, committed an offence set forth in article 2. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

ARTICLE 6

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

ARTICLE 7

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

- a. The offence is committed in the territory of that State;
- b. The offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed;
- c. The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

- a. The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), in the territory of or against a national of that State;
- b. The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), against a State or government facility of that State abroad, including diplomatic or consular premises of that State;
- c. The offence was directed towards or resulted in an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), committed in an attempt to compel that State to do or abstain from doing any act;
- d. The offence is committed by a stateless person who has his or her habitual residence in the territory of that State;
- e. The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties that have established their jurisdiction in accordance with paragraphs 1 or 2.

5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.

6. Without prejudice to the norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

ARTICLE 8

1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.

2. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the forfeiture of funds used or allocated for the purpose of committing the offences set forth in article 2 and the proceeds derived from such offences.

3. Each State Party concerned may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of the funds derived from the forfeitures referred to in this article.

4. Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1, subparagraph (a) or (b), or their families.

5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.

ARTICLE 9

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person=s presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:

- a. Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that persons rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;
- b. Be visited by a representative of that State;
- c. Be informed of that persons rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 7, paragraph 1, subparagraph b., or paragraph 2, subparagraph b., to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 7, paragraph 1 or 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that persons detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

ARTICLE 10

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 7 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

ARTICLE 11

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

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

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 7, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

ARTICLE 12

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in article 2, including assistance in obtaining evidence in their possession necessary for the proceedings.

2. States Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy.

3. The requesting Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

4. Each State Party may give consideration to establishing mechanisms to share with other State Parties information or evidence needed to establish criminal, civil or administrative liability pursuant to article 5.

5. States Parties shall carry out their obligations under paragraphs 1 and 2 in conformity with any treaties or other arrangements on mutual legal assistance or information exchange that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

ARTICLE 13

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, States Parties may not refuse a request for extradition or for mutual legal assistance on the sole ground that it concerns a fiscal offence.

ARTICLE 14

None of the offences set forth in article 2 shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

ARTICLE 15

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or

punishing a person on account of that person=s race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person=s position for any of these reasons.

ARTICLE 16

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in article 2 may be transferred if the following conditions are met:
 - a. The person freely gives his or her informed consent;
 - b. The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.
2. For the purposes of the present article:
 - a. The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;
 - b. The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;
 - c. The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;
 - d. The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

ARTICLE 17

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

ARTICLE 18

1. States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, inter alia, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:

- a. Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;
- b. Measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity. For this purpose, States Parties shall consider:
 - i Adopting regulations prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;
 - ii With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer=s name, legal form, address, directors and provisions regulating the power to bind the entity;
 - iii Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;
 - iv Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international.

2. States Parties shall further cooperate in the prevention of offences set forth in article 2 by considering:

- a. Measures for the supervision, including, for example, the licensing, of all money-transmission agencies;
- b. Feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

3. States Parties shall further cooperate in the prevention of the offences set forth in article 2 by exchanging accurate and verified information in accordance with their domestic law and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 2, in particular by:

- a. Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;
- b. Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:
 - i The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;
 - ii The movement of funds relating to the commission of such offences.

4. States Parties may exchange information through the International Criminal Police Organization (Interpol).

ARTICLE 19

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

ARTICLE 20

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

ARTICLE 21

Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.

ARTICLE 22

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

ARTICLE 23

1. The annex may be amended by the addition of relevant treaties that:
 - a. Are open to the participation of all States;
 - b. Have entered into force;
 - c. Have been ratified, accepted, approved or acceded to by at least twenty-two States Parties to the present Convention.
2. After the entry into force of this Convention, any State Party may propose such an amendment. Any proposal for an amendment shall be communicated to the depositary in written form. The depositary shall notify proposals that meet the requirements of paragraph 1 to all States Parties and seek their views on whether the proposed amendment should be adopted.
3. The proposed amendment shall be deemed adopted unless one third of the States Parties object to it by a written notification not later than 180 days after its circulation.
4. The adopted amendment to the annex shall enter into force 30 days after the deposit of the twenty-second instrument of ratification, acceptance or approval of such amendment for all those States Parties having deposited such an instrument. For each State Party ratifying, accepting or approving the amendment after the deposit of the twenty-second instrument, the amendment shall enter into force on the thirtieth day after deposit by such State Party of its instrument of ratification, acceptance or approval.

ARTICLE 24

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a

reasonable time 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 application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

ARTICLE 25

1. This Convention shall be open for signature by all States from ... until ... at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE 26

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

ARTICLE 27

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

ARTICLE 28

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on

ANNEX

1. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.
2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.
3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.
4. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
5. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.
6. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.
7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.
8. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.
9. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

**INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE
FINANCING OF TERRORISM**
New York, 9 December 1999

Entry into force: 10 April 2002, in accordance with article 26 (1).

Status: Signatories: 132 ,Parties: 44.

State	Signature	Ratification, Acceptance (A), Approval (AA), Accession (a)
Albania	18 Dec 2001	10 Apr 2002
Algeria	18 Jan 2000	8 Nov 2001
Andorra	11 Nov 2001	
Antigua and Barbuda		11 Mar 2002 a
Argentina	28 Mar 2001	
Armenia	15 Nov 2001	
Australia	15 Oct 2001	
Austria	24 Sep 2001	15 Apr 2002
Azerbaijan	4 Oct 2001	26 Oct 2001
Bahamas	2 Oct 2001	
Bahrain	14 Nov 2001	
Barbados	13 Nov 2001	
Belarus	12 Nov 2001	
Belgium	27 Sep 2001	
Belize	14 Nov 2001	
Benin	16 Nov 2001	
Bhutan	14 Nov 2001	
Bolivia	10 Nov 2001	7 Jan 2002
Bosnia and Herzegovina	11 Nov 2001	
Botswana	8 Sep 2000	8 Sep 2000
Brazil	10 Nov 2001	
Bulgaria	19 Mar 2001	15 Apr 2002
Burundi	13 Nov 2001	
Cambodia	11 Nov 2001	
Canada	10 Feb 2000	19 Feb 2002

Cape Verde	13 Nov 2001	10 May 2002
Central African Republic	19 Dec 2001	
Chile	2 May 2001	10 Nov 2001
China	13 Nov 2001	
Colombia	30 Oct 2001	
Comoros	14 Jan 2000	
Congo	14 Nov 2001	
Cook Islands	24 Dec 2001	
Costa Rica	14 Jun 2000	
Côte d'Ivoire		13 Mar 2002 a
Croatia	11 Nov 2001	
Cuba	19 Oct 2001	15 Nov 2001
Cyprus	1 Mar 2001	30 Nov 2001
Czech Republic	6 Sep 2000	
Democratic People's Republic of Korea	12 Nov 2001	
Democratic Republic of the Congo	11 Nov 2001	
Denmark	25 Sep 2001	27 Aug 2002
Djibouti	15 Nov 2001	
Dominican Republic	15 Nov 2001	
Ecuador	6 Sep 2000	
Egypt	6 Sep 2000	
Estonia	6 Sep 2000	22 May 2002
Finland	10 Jan 2000	28 Jun 2002 A
France	10 Jan 2000	7 Jan 2002
Gabon	8 Sep 2000	
Georgia	23 Jun 2000	
Germany	20 Jul 2000	
Ghana	12 Nov 2001	6 Sep 2002
Greece	8 Mar 2000	
Grenada		13 Dec 2001 a
Guatemala	23 Oct 2001	12 Feb 2002

Guinea	16 Nov 2001	
Guinea-Bissau	14 Nov 2001	
Honduras	11 Nov 2001	
Hungary	30 Nov 2001	
Iceland	1 Oct 2001	15 Apr 2002
India	8 Sep 2000	
Indonesia	24 Sep 2001	
Ireland	15 Oct 2001	
Israel	11 Jul 2000	
Italy	13 Jan 2000	
Jamaica	10 Nov 2001	
Japan	30 Oct 2001	11 Jun 2002 A
Jordan	24 Sep 2001	
Kenya	4 Dec 2001	
Latvia	18 Dec 2001	
Lesotho	6 Sep 2000	12 Nov 2001
Libyan Arab Jamahiriya	13 Nov 2001	9 Jul 2002
Liechtenstein	2 Oct 2001	
Luxembourg	20 Sep 2001	
Madagascar	1 Oct 2001	
Mali	11 Nov 2001	28 Mar 2002
Malta	10 Jan 2000	11 Nov 2001
Mauritius	11 Nov 2001	
Mexico	7 Sep 2000	
Micronesia (Federated States of)	12 Nov 2001	
Monaco	10 Nov 2001	10 Nov 2001
Mongolia	12 Nov 2001	
Morocco	12 Oct 2001	
Mozambique	11 Nov 2001	
Myanmar	12 Nov 2001	
Namibia	10 Nov 2001	
Nauru	12 Nov 2001	

Netherlands	10 Jan 2000	7 Feb 2002 A
New Zealand	7 Sep 2000	
Nicaragua	17 Oct 2001	
Nigeria	1 Jun 2000	
Norway	1 Oct 2001	15 Jul 2002
Palau		14 Nov 2001 a
Panama	12 Nov 2001	3 Jul 2002
Paraguay	12 Oct 2001	
Peru	14 Sep 2000	10 Nov 2001
Philippines	16 Nov 2001	
Poland	4 Oct 2001	
Portugal	16 Feb 2000	
Republic of Korea	9 Oct 2001	
Republic of Moldova	16 Nov 2001	
Romania	26 Sep 2000	
Russian Federation	3 Apr 2000	
Rwanda	4 Dec 2001	13 May 2002
Saint Kitts and Nevis	12 Nov 2001	16 Nov 2001
Saint Vincent and the Grenadines	3 Dec 2001	28 Mar 2002
Samoa	13 Nov 2001	
San Marino	26 Sep 2000	12 Mar 2002
Saudi Arabia	29 Nov 2001	
Seychelles	15 Nov 2001	
Sierra Leone	27 Nov 2001	
Singapore	18 Dec 2001	
Slovakia	26 Jan 2001	
Slovenia	10 Nov 2001	
Somalia	19 Dec 2001	
South Africa	10 Nov 2001	
Spain	8 Jan 2001	9 Apr 2002
Sri Lanka	10 Jan 2000	8 Sep 2000
Sudan	29 Feb 2000	
Sweden	15 Oct 2001	6 Jun 2002
Switzerland	13 Jun 2001	
Tajikistan	6 Nov 2001	
Thailand	18 Dec 2001	
The Former Yugoslav Republic of Macedonia	31 Jan 2000	
Togo	15 Nov 2001	
Tunisia	2 Nov 2001	

Turkey	27 Sep 2001	28 Jun 2002
Uganda	13 Nov 2001	
Ukraine	8 Jun 2000	
United Kingdom of Great Britain and Northern Ireland	10 Jan 2000	7 Mar 2001
United States of America	10 Jan 2000	26 Jun 2002
Uruguay	25 Oct 2001	
Uzbekistan	13 Dec 2000	9 Jul 2001
Venezuela	16 Nov 2001	
Yugoslavia	12 Nov 2001	

**MODEL LEGISLATIVE PROVISIONS FOR IMPLEMENTATION OF THE
INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE
FINANCING OF TERRORISM**

NOTE

No specific penalties for the offences have been included because of the variation in sentencing practice between states. However the Convention requires penalties that reflect the seriousness of the offence and therefore maximum penalties should be set including, if appropriate, a life sentence.

Whereas the International Convention for the Suppression of The Financing of Terrorism was adopted by the General Assembly of the United Nations on December 9, 1999:

And Whereas (name of country) intends acceding to the said Convention by depositing an instrument of accession with the Secretary General of the United Nations:

And Whereas it is necessary to make legal provision to give effect to (name of country) obligations under the said Convention:

Now therefore, be it enacted by the Parliament of (name of country) as follows:-

Short title and date of operation

1. This Act may be cited as the Suppression of The Financing of Terrorism Act, and shall come into operation on such date as the Minister (responsible for Foreign Affairs), by Order published in the Gazette, certifies as the date on which the Convention enters into force in respect of (name of country).

Interpretation

2. In this said Act unless the context otherwise requires –

“Convention” means the International Convention for the Suppression of the Financing of Terrorism adopted by the General Assembly of the United Nations on December 9, 1999;

“Convention State” means a State declared by the Minister (of Foreign Affairs), by Order published in the Gazette, to be a party to the Convention;

“Financial Institution” means a commercial bank or any other institution which makes loans or advances or investments or receives deposits of money from the public;

NOTE

Countries may wish to expand the definition of “Financial Institution” or apply it to other professions or organisations.

NOTE

Consistent with the terminology in the convention, the term “funds” is used and defined below. However for consistency with other conventions (United Nations Convention against illicit traffic in Narcotic Drugs and Psychotropic Substances and United Nations Convention against Transnational Organized Crime) and to reflect the broad application intended, countries may wish to substitute the term “property” applying the same definition as is set out below for the term “funds”.

“funds” mean-

- (a) assets of every kind, whether tangible or intangible, movable or immovable, however acquired; and
- (b) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets including but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit;

“proceeds” mean any funds derived from, or obtained through, the commission of an offence under section 3;

“state or government facility” includes any permanent or temporary facility or conveyance that is used or occupied by –

- (a) representative of any Government;
 - (b) the head of State of any country;
 - (c) the Prime Minister or Minister of any country;
 - (d) a member of the legislature of any country;
 - (e) a Judge of any country;
 - (f) an official or employee of a Government or any other inter governmental Organisation,
- in connection with his or her official duties.

Offences

NOTE

Section 3 below is designed to implement the offence provision of the Convention and therefore applies the limited definition of the terrorist offence set out therein. Countries may choose to enact a broader definition by expanding the types of terrorist acts under subsection 3(1) b. Countries may also wish to expand on the offences included here in order to implement both this Convention and UN Security Council resolution 1373.

Examples of possible expanded definitions and additional offences can be found in the Model Legislative Provisions to Combat Terrorism produced by the Commonwealth Secretariat.

3. (1) Every person who, by any means whatsoever, directly or indirectly, provides (whether by giving, lending or otherwise making available) or collects funds with the intention that they should be used, or having reasonable grounds to believe that they are to be used, in full or in part, in order to carry out -
 - (a) an act, wherever committed, which constitutes an offence within the scope of, or as defined in, any treaty set out in the Schedule to this Act;
 - (b) any other act, wherever committed, intended to cause death or serious bodily injury to a person, where the purpose of the act is to:
 - (i) intimidate the public or a section of the public; or
 - (ii) compel a government or an international organisation to do, or abstain from doing, any act,commits an offence under this Act and upon conviction shall be liable to imprisonment for a term of () years.
- (2) The reference in -
 - (a) paragraph (b) (i) of subsection (1) to "a person" includes a reference to a person outside (name of country);
 - (b) in paragraph (b) (ii) of subsection (1) to "the public or a section of the public" includes a reference to the public or a section of the public of a country other than (name of country); and
 - (c) paragraph (b) (iii) of subsection (1) to "a government" includes a reference to a government other than the government of (name of country).
- (3) Every person who-
 - (a) organises or directs others to commit,
 - (b) attempts to commit,
 - (c) conspires to commit,
 - (d) participates as an accomplice to a person committing, or attempting to commit,an offence under subsection (1) commits an offence and upon conviction shall be liable to a term of imprisonment of () years.

Orders for Seizure and Restraint of Property

4. (1) Where a judge of the High Court is satisfied, on an *ex parte* application made to the judge in chambers, that there are reasonable grounds to [believe] [suspect] that there is in any building, place or vessel, any property in respect of which an order of forfeiture may be made under section 5 or 6, the judge may issue -

a warrant authorising a police officer to search the building, place or vessel for that property and to seize that property if found, and any other property in respect of which that police officer believes, on

- (a) reasonable grounds, that an order of forfeiture may be made under section 5 or 6;
 - (b) a restraint order prohibiting any person from disposing of, or otherwise dealing with any interest in, that property, other than as may be specified in the order.
- (2) On an application made under subsection (1), the judge may, at the request of the Attorney General and if the judge is of the opinion that the circumstances so require-
- (a) appoint a person to take control of, and manage or otherwise deal with, the whole or a part of the property, in accordance with the directions of the judge;
 - (b) require any person having possession of the property to give possession thereof to the person appointed under paragraph (a)
- (3) The power to manage or otherwise deal with property under subsection (2) includes -
- (a) in the case of perishable or rapidly depreciating property, the power to sell that property; and
 - (b) in the case of property that has little or no value, the power to destroy that property.
- Before a person appointed under subsection (2) destroys any property referred to subsection 3 (b), he or she shall apply to a Judge of the High Court for a destruction order.
- (5) Before making a destruction order in relation to any property, the judge shall require notice to be given, in such manner as the judge may direct, to any person who, in the opinion of the judge, appears to have an interest in the property and may provide that person with a reasonable opportunity to be heard.
- (6) A judge may order that any property in respect of which an application is made under subsection (4), be destroyed if he or she is satisfied that the property has little or no financial or other value.
- (7) A management order under subsection (2) shall cease to have effect when the property which is the subject of the management order is returned to an applicant in accordance with the law or forfeited to the State.
- (8) The Attorney General may at any time apply to a Judge of the High Court to cancel or vary a warrant or order issued under this section.

Forfeiture of property

5. (1) Where a person is convicted of an offence under section 3, the High Court may order that any funds which –

- (a) were used for , or in connection with; or
- (b) constitute the proceeds of,

the commission of that offence, be forfeited to the State.

- (2) Before making an order under subsection (1), the High Court shall give every person appearing to have an interest in the funds in respect of which the order is proposed to be made, an opportunity of being heard.
- (3) Funds forfeited to the State by an order made under subsection (1) shall vest in the State -
 - (a) if no appeal is made against the order, at the end of the period within which an appeal may be made against that order; and
 - (b) if an appeal has been made against the order, on the final determination of the appeal.

Orders for Forfeiture of Property

- 6. (1) The Attorney General may make an application to a Judge of the High Court for an order of forfeiture in respect of terrorist property
- (2) The Attorney General shall be required to name as respondents to an application under subsection (1) only those persons who are known to own or control the property that is the subject of the application.
- (3) The Attorney General shall give notice of an application under subsection (1) to the respondents named in the application in such manner as the judge may direct.
- (4) If a judge is satisfied, on a balance of probabilities, that the property which is the subject of the application, is property is terrorist property, the judge shall order that the property be forfeited to the State to be disposed of as directed by the Judge.
- (5) Where a judge refuses an application under subsection (1), the judge shall make an order that describes the property and declare that it is not property referred to in that subsection.
- (6) On an application under subsection (1), a judge may require notice to be given to any person, who in the opinion of the judge, appears to have an interest in the property, and any such person shall be entitled to be added as a respondent to the application.
- (7) If a judge is satisfied that a person referred to in subsection (6) -
 - (a) has an interest in the property which is the subject of the application,
 - (b) has exercised reasonable care to ensure that the property is not the proceeds of a terrorist act, would not be used to commit or facilitate

the commission of a terrorist act and would not be used by a terrorist group; and

- (c) is not a member of a terrorist group,

the judge shall order that the interest shall not be affected by the order. The order shall also declare the nature and extent of the interest in question.

- (8) A person who claims an interest in property that has been forfeited and who has not been given notice under subsection (6) may make an application to the Supreme Court to vary or set aside an order made under subsection (4) not later than 60 days after the day on which the forfeiture order was made.
- (9) Pending the determination of an appeal against an order of forfeiture made under this section, property restrained under section 34 shall continue to be restrained, property seized under a warrant issued under that section shall continue to be detained, and any person appointed to manage, control or otherwise deal with the property under that section shall continue in that capacity.
- (10) The provisions of this section shall not affect the operation of any other provision of this Act respecting forfeiture.

Jurisdiction

NOTE

The Convention contains mandatory and discretionary provisions regarding jurisdiction. In section 4 below, all the basis of jurisdiction mentioned in the Convention are included with those that are discretionary in italics.

The Convention contains a “prosecute or extradite” obligation with respect to the offences. In order to meet this requirement, a State must have the jurisdiction to prosecute an offence where the person is present on that State’s territory, regardless of the fact that no basis of jurisdiction set out in 5 (2) (a) – (h) exists. In order to meet this obligation, the State needs to have jurisdiction arising from the person’s presence in that state. One way to incorporate that jurisdiction is through a universal jurisdiction clause based on the presence of the person. This has been reflected in sub section 5(2) (i). If that is considered overly broad, the bracketed and italicized language at the end of 5(2) (i) can be added limiting the application of the section to cases where extradition is not possible. While this second approach is more limited in scope, there may be problems of proof arising from the need to establish that extradition is not possible.

- 5. (1) All offences under Section 3 are triable by the High Court (highest court exercising original criminal jurisdiction).

- (2) The High Court (highest court exercising original criminal jurisdiction), shall have jurisdiction to try an offence under Section 3 in every case where the act constituting the offence –
- (a) is committed in(name of country);
 - (b) is committed on board a vessel or aircraft registered in(name of country);
 - (c) is committed by a national of (name of country), whether the act constituting the offence is committed within, or outside(name of country);
 - (d) *is directed towards, or results in, the commission of an act referred to in section 3 (1) (a) or section 3 (1) (b), in (name of country) or against a national of (name of country);*
 - (e) *is directed towards, or results in, the commission of an act referred to in section 3 (1) (a) or section 3 (1) (b) against an embassy, diplomatic or consular premises or any other property of the Government of (name of country) in any other country;*
 - (f) *is directed towards , or results in , the commission of an act referred to in section 3 (1) (a) or section 3 (1) (b) in an attempt to compel the Government of(name of country), to do, or abstain from doing, any act;*
 - (g) *is committed by a stateless person whose habitual residence is in (name of country), whether the act constituting the offence is committed within or outside(name of country);*
 - (h) *is committed on board an aircraft operated by the Government of(name of country);*
 - (i) is committed by a person who is, after the commission of the act, present in (name of country), whether the act constituting the offence is committed within or outside(name of country) [*and he or she cannot be extradited to a foreign state having jurisdiction over the offence.*]

Extradition

6. (1) The offences described in section 3 shall be deemed to be extraditable offences under the Extradition Act, and accordingly, the provisions of that Act shall apply to, and in relation to, extradition in respect of those offences.
- (2) Where there is, on the date on which this Act comes into operation, an extradition arrangement in force between the Government of(name of country) and a Convention State, such arrangement shall, for the purposes of the Extradition Act, be deemed to include provision for extradition in respect of the offences described in Section 3.
- (3) Where there is no extradition arrangement between the Government of(name of country) and a Convention State, the Minister (of Foreign Affairs) may, by Order published in the Gazette, treat the Convention, for the purposes of the Extradition Act, as an extradition arrangement between the Government of(name of country) and such Convention State providing for extradition in respect of the offences described in section 3.

- (4) Where the Government of (name of country) accedes to request by a Convention State for the extradition of a person accused of an offence described in section 3, the act constituting such offence shall, for the purposes of the Extradition Act, be deemed to have been committed not only in the place where it was committed but also within the jurisdiction of the requesting Convention State.
- (5) Notwithstanding anything in the Extradition Act, an offence described in Section 3 shall, for the purposes of that Act, be deemed not to be a fiscal offence or an offence of a political character or an offence connected with a political offence or an offence inspired by political motives, for the purpose only of the extradition of a person accused of any such offence as between the Government of (name of country) and a Convention State.
- (6) Notwithstanding anything in the Mutual Assistance Act, a request by a Convention State for mutual legal assistance in respect of an offence described in section 3 shall not be refused solely on the ground that-
 - (a) The rendering of such assistance would result in a violation of the laws relating to bank secrecy; or
 - (b) such offence is a fiscal offence; or
 - (c) such offence is a political offence or an offence connected with a political offence or an offence inspired by political motives.

NOTE

Sub-paragraphs 5 and 6 will only be required if political or fiscal offence is included as a ground of refusal in extradition or mutual assistance legislation or there are bank secrecy provisions that could preclude the rendering of assistance. If the latter is the case, a careful review of mutual assistance and secrecy laws needs to be made to ensure that a court can override secrecy provisions where a mutual assistance request seeks the production of bank records and there is a bases to believe that material is relevant to the foreign investigation or proceeding.

- 7. (1) Where (name of country) approves a request from a Convention State seeking the temporary transfer of a person in custody in (name of country) to the Convention State to testify or assist an investigation or proceeding relating to a Convention offence, the (Attorney General or other appropriate authority) may make an application to the court for a transfer order.
- (2) The application shall specify:
 - (a) the name and location of the detained person;
 - (b) the period of time for which the person is to be transferred;
 - (c) the country to which the person is to be transferred;
 - (d) the person or class of person into whose custody the person is to be delivered for the purpose of the transfer; and
 - (e) the purpose of the transfer.

- (3) If the judge hearing an application brought pursuant to section 1 is satisfied that the detained person consents to the transfer and the transfer is for a fixed period, the judge shall make a transfer order, including any conditions he or she considers appropriate.
- (4) Notwithstanding any provision in the (Immigration Act or other similar legislation), where a request has been made by (name of country) for a person detained in a Convention State to be temporarily transferred to (name of country) to testify or assist an investigation or proceeding relating to an offence under this Act, the (Minister, Attorney General or other appropriate authority) may authorize the detained person to enter (name of country) to remain in a fixed location or locations for a specified period of time.
- (5) The (Minister, Attorney General or other appropriate authority) may vary the terms of an authorization issued under sub-paragraph (4).
- (6) A person who is in (name of country) pursuant to a request made by (name of country) shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in (name of country) in respect of any acts or convictions anterior to his or her departure from the territory of the Convention State from which such person was transferred.

Duties of Financial Institutions

NOTE

Article 18 of the Convention imposes a general obligation to adopt measures to require financial institutions and other professions involved in financial transactions to identify customers identity and report suspicious transactions. It does not however mandate the particular way in which such a measure should be adopted but rather sets out examples. Paragraph 8 is an example of a provision which can be included in response to this general obligations. However countries without general anti-money laundering legislation and regulations will need to adopt specific anti-money laundering provisions to address this obligation.

8. (1) Every Financial Institution shall report to the [Financial Intelligence Unit] [Head of the Police] every transaction which occurs in the course of its activities and in respect of which there are reasonable grounds to suspect that the transaction is related to the commission an offence under section 3 by reason, inter alia, of any or all of the following –
 - (a) the complexity of the transaction;
 - (b) the fact that the funds involved in the transaction are unusually large;
 - (c) the fact that the transaction follows an unusual pattern; or
 - (d) the fact that the transaction has no apparent economic or obvious lawful purpose.
- (2) It shall be the duty of every Financial Institution to maintain records in what ever form, including electronic or digital, of every transaction which occurs

in the course of its activities for a period of at least five years from the date of such transaction.

- (3) No civil or criminal proceedings shall lie against a Financial Institution for making a report, in good faith, under subsection (1).
- (4) Every Financial Institution which fails, without reasonable cause, to comply with subsection (1) or (2) commits an offence and shall be liable on conviction to imprisonment for a term of () years.

Regulations:

- 9. (1) The Minister (responsible for the Act) may make regulations amending the Schedule to this Act.
- (2) Every regulation made under subsection (1) shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified therein.

SCHEDULE (Sections 3 & 9)
(List of treaties)

FINANCING CONVENTION ARTICLES	BOMBING CONVENTION ARTICLES
1	1
2	2
3	3
4	4
5	-
6	5
7	6
8	-
9	7
10	8
11	9
12	10
13	-
14	11
15	12
16	13
17	14
18	15
19	16
20	17
21	19
22	18
23	-
24	20
25	21
26	22
27	23
28	24

**STATUS OF SIGNATURE RATIFICATION OR ACCESSION OF THE 12 UNIVERSAL COUNTER-TERRORISM CONVENTIONS BY
COMMONWEALTH MEMBER COUNTRIES**
(As at September 2002)

Notes

S = Signature
R = Ratification
A = Accession

	Country	1. Convention on Offences on Board Aircraft 1963	2. Suppression of Unlawful of Aircraft Service 1970	3. Safety of Civil Aviation 1971	4. Internationally protected persons 1973	5. Taking of Hostages 1979	6. Protection Nuclear Material 1980	7. Rome Convention 1988	8. Rome Protocol 1988	9. Safety of Maritime Navigation 1988	Marking of Plastic Explosives 1991	Suppression of Terrorist Bombings 1997	Suppression of Terrorist Financing 1999
1	Antigua & Barbuda	17/10/85	22/7/85	22/7/85	A 19/7/93	A 6/8/86	A 3/9/93						A 11/3/02
2	Australia	20/9/70	9/11/72	12/7/73	R 20/1/77	A 21/5/90	R 22/10/87	X	X	22/11/90		A 9/8/00	S 15/10/01
3	The Bahamas	10/7/73	13/8/76	27/12/84	A 22/7/86	A 4/6/81							S 2/10/01
4	Bangladesh	23/10/78	28/6/78	28/6/78									
5	Barbados	3/7/72	7/7/72	2/4/73	6/8/76	A 26/10/79	A 9/3/81			x	X		S 13/11/01
6	Belize	17/8/98	10/6/98	10/6/98	A 14/11/01	A 14/11/01				10/7/98	S 1/3/91	A 14/11/01	S 14/11/01
7	Botswana	16/4/79	28/12/78	28/12/78	A 25/10/00	A 8/9/00	A 19/10/00	X	X	9/11/00	18/11/00	8/11/00	R 8/9/00
8	Brunei Darussalam	21/8/86	16/4/86	16/4/86	A 13/11/97	A 18/10/88				9/1/01		A 14/3/02	
9	Cameroon	22/6/86	14/4/88	11/7/73	A 8/1/92	A 9/3/88				S 23/11/88	2/8/98		
10	Canada	5/2/70	20/6/72	19/6/72	R 4/8/76	R 4/12/85	R 8/2/87	X	X	11/9/93	21/6/98	R 3/4/02	R 19/2/02
11	Cook Islands												S 24/12/01
12	Cyprus	29/8/72	5/7/72	27/7/73	A 24/12/75	A 13/9/91	A 22/8/98	X	X	23/5/02		R 24/1/01	R 30/11/01
13	Dominica					A 9/11/86		X					
14	Fiji	10/10/70	27/7/72	5/3/73						21/10/92			

15	The Gambia	4/4/79	28/11/78	28/11/78			X		16/7/00	19/8/00		
16	Ghana	2/4/74	12/12/73	12/12/73	A 25/4/75	A 10/11/87	X	X	14/8/97	21/6/98	A 6/9/02	R 6/9/02
17	Grenada	26/11/78	10/8/78	10/8/78	A 13/12/01	A 10/12/90	X	X	14/2/02	16/3/02	A 13/12/01	A 13/12/01
18	Guyana	19/3/73	21/12/72	21/12/72					11/7/02			
19	India	20/10/75	12/11/82	12/11/82	A 11/4/78	R 7/9/02	A 11/4/02	X	21/4/95	15/1/00	R 22/9/99	S 8/9/00
20	Jamaica	15/12/83	15/9/83	15/9/83	A 21/9/78	S 27/2/80			S 24/2/88			S 10/11/01
21	Kenya	20/9/70	11/1/77	11/1/77	A 16/11/01	A 8/12/81	A 13/3/02	X	4/11/95		A 16/11/01	S 4/12/01
22	Kiribati											
23	Lesotho	27/7/72	27/7/78	23/12/77		5/11/80					A 12/11/01	R 12/11/01
24	Malawi	28/3/73	21/12/72	21/12/72	A 14/3/77	A 17/3/86			S 24/2/88			
25	Malaysia	3/6/85	4/5/85	4/5/85					S 24/2/88			
26	Maldives	27/12/87	1/9/87	1/9/87	A 21/8/90				21/4/99	21/5/91	A 7/9/00	
27	Malta	26/9/91	14/6/91	14/6/91	A 11/11/01	A 11/11/01		X	X	14/7/91	21/6/98	A 11/11/01
28	Mauritius	4/7/83	25/4/83	25/4/83		A 17/10/80			16/9/89	S 21/3/91		S 11/11/01
29	Mozambique											S 11/11/01
30	Namibia											S 10/11/01
31	Nauru	15/8/84	17/5/84	17/5/84								S 12/11/01
32	New Zealand	13/5/74	12/2/74	12/2/74	A 12/11/85	12/11/85		X	X	1/9/99		S 7/9/00
33	Nigeria	6/7/70	3/7/73	3/7/73						9/7/02		S 1/6/00
34	Pakistan	10/12/73	28/11/73	24/1/74	A 29/5/76	A 8/9/00	A 12/10/00	X	X	21/10/00	S 1/3/91	A 13/9/02
35	Papua New Guinea	16/9/75	15/12/75	15/12/75						10/8/02		
36	Samoa	7/10/98	9/7/98	9/7/98						8/8/98	7/9/98	
37	Seychelles	4/4/79	29/12/78	29/12/78	A 29/5/80			X	X			S 15/11/01

38	Sierra Leone	7/2/71	13/11/74	20/9/79								S 27/11/01
39	Singapore	30/5/71	12/4/78	12/4/78						22/12/96		S 18/12/01
40	Solomon Islands	7/7/78		13/4/82								
41	South Africa	24/8/72	30/5/72	30/5/72			S 18/5/81			12/10/98	30/1/00	S 21/12/99
42	Sri Lanka	28/8/78	30/5/78	30/5/78	A 27/2/91	A 8/9/00		X		13/3/97	10/12/01	R 23/3/99
43	St Kitts & Nevis					A 17/1/91		X			8/7/02	A 16/11/01
44	St Lucia	29/1/84	8/11/83	8/11/83						11/7/90		
45	St Vincent & The Grenadines	16/2/92	29/11/91	29/11/91	A 12/9/00	A 12/9/00		X	X	29/12/91		R 28/3/02
46	Swaziland	13/2/00	27/12/99	27/12/99								
47	Tonga	14/5/02	21/2/77	21/2/77								
48	Trinidad & Tobago	9/5/72	31/1/72	9/2/72	A 15/6/79	A 1/4/81	A 25/5/01	X	X	3/5/01	2/6/01	A 2/4/01
49	Tuvalu											
50	Uganda	23/9/82	27/3/72	19/7/82		S 10/11/80				16/4/94		S 11/6/99
51	United Kingdom	4/12/69	22/12/71	25/10/73	R 26/10/76	R 22/12/82	R 6/10/91	X	X	15/12/90	21/6/98	R 7/3/01
52	United Republic of Tanzania	10/11/83	9/8/83									
53	Vanuatu	1/5/89	22/2/89						X			
54	Zambia	13/12/71	3/3/87	3/3/87							21/6/98	
55	Zimbabwe	6/6/89	6/2/89	6/2/89								