

CHAPTER THREE

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF CIVIL AVIATION, MONTREAL, 23RD SEPTEMBER 1971

The offence established by the Hague Convention requires a seizure of an aircraft or an exercise of control over an aircraft, or an attempt to perform either of these acts. It may be committed only by a person or persons on board the aircraft which is the object of the actual or attempted seizure or exercise of control. Similarly, the conduct of an accomplice must take place on board an aircraft in flight if it is to constitute an offence within the Hague Convention. The effect of these provisions is to limit severely the scope of the offence under the Hague Convention. In particular they exclude from its ambit cases where force is applied from outside the aircraft. Unhappily, such conduct has occurred frequently and an international convention was clearly required to co-ordinate means for the deterrence and punishment of such activities.

I.C.A.O. estimates that between 1949 and 1970, 22 aircraft were destroyed and over 400 persons killed as a result of the detonation of explosives on board aircraft. (I.C.A.O. Doc. A17-WP/25.) Two separate incidents on the same day, 21 February 1970, resulted in an extraordinary session of the I.C.A.O. Assembly at Montreal in June 1970 in order to consider means of combating unlawful acts against the safety of civil aviation. The Assembly instructed the Legal Committee to prepare a draft Convention. A draft was prepared at a meeting in London in September and October 1970 and submitted to a diplomatic conference held in Montreal in September 1971. On 23 September 1971 the conference adopted the Convention for the Suppression of Unlawful Acts against

the Safety of Civil Aviation and it was signed by 31 States. The Convention entered into force on 26 January 1976, thirty days after the deposit of the tenth instrument of ratification. Its text appears as Appendix 7.

Ninety-six States are currently parties to the Montreal Convention. A further ten States have signed the Convention but have not yet ratified it. The United Kingdom ratified the Convention on 25 October 1973 and that ratification was expressed to be "in respect of the United Kingdom of Great Britain and Northern Ireland and Territories under the territorial sovereignty of the United Kingdom as well as the British Solomon Islands Protectorate." A number of these territories have since attained independence. Papua New Guinea has formally succeeded to the Convention. A number of other newly independent Commonwealth States are entitled to succeed to the Convention. Certain other newly independent Commonwealth States have acceded to the Convention. A complete list of signatures, ratifications, accessions and successions is set out in Appendix 8.

Object and purpose of the Convention

In the preamble to the Convention the contracting States express their grave concern at the occurrence of unlawful acts against the safety of civil aviation which jeopardize the safety of persons and property, seriously affect the operation of air services, and undermine confidence in the safety of civil aviation. The preamble also refers to the urgent need to provide appropriate measures for the punishment of offenders, for the purpose of deterring such acts.

The approach adopted by the Montreal Convention is very similar to that of the Hague Convention and many of their provisions are in identical terms. The Montreal Convention

begins by establishing a number of offences. (Article 1.) It then imposes an obligation on each contracting State to make the offences punishable by severe penalties. (Article 3.) Each contracting State 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 contracting State, 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 presence. (Article 6.) A contracting State in the territory of which the alleged offender is found is under a duty to submit the case to its competent authorities for the purpose of prosecution, if it does not extradite him. (Article 7.) The Convention also deals with questions of extradition. (Article 8.)

The 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 identical with those contained in Article 1(4) of the Tokyo Convention and Article 3(2) of the Hague Convention.

Generally, the Convention applies only in the following cases:

1. The Convention applies if the place of take-off and the place of landing, actual or intended, of the aircraft is situated outside the territory of the State of registration of the aircraft or if the offence is committed in the territory of a State other than the State of registration of the aircraft. (Article 4(2).) This provision is slightly wider than the

comparable provision in the Hague Convention (Article 3(3)) in that it applies if either the actual or intended place of landing is situated outside the territory of the State of registration. The provision in the Montreal Convention would also extend its application to conduct in relation to an aircraft passing through the airspace of another State while travelling between two points in the State of registration. If these requirements are satisfied it is, however, immaterial whether the aircraft was engaged on an international or a domestic flight.

2. The Convention applies if the offender or alleged offender is found in the territory of a State other than the State 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 State of registration of the aircraft and the offence is committed in the territory of the State of registration.

To these rules as to the applicability of the Convention there are two important exceptions:

1. In the case of the offence created by Article 1(1)(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).)
2. Special provision is made for joint air

transport operating organizations or international operating agencies which operate aircraft which are subject to joint or international registration. With respect to States which establish such organizations or agencies, the Convention does not apply, save in the case of the offence created by Article 1(1)(d) which is governed by the rule stated in the preceding paragraph, if the places of take-off and landing, actual or intended, are situated within the territory of the same State and that State is one which has established the organisation or agency. However the Convention will apply if the offender or alleged offender is subsequently found in the territory of a State other than that State. (Article 4(4).)

The Offences

Article 1(1) of the Montreal Convention provides:

- "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 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."

Under Article 3 each contracting State undertakes to make the offences punishable by severe penalties.

It is convenient to consider each of these offences in turn.

- (a) A person commits an offence within Article 1(1)(a) if he unlawfully and intentionally performs an act of violence against a person on board an aircraft in flight which is likely to endanger the safety of the aircraft. This provision reflects the fact that the principal concern of the Convention is the safety of civil aviation. The act of violence must be likely to endanger the safety of the aircraft.

The act of violence must be directed against a person on board an aircraft in flight but in contrast to the position under the Hague Convention the actor need not necessarily be on board the aircraft at the time of the act. Thus the provision would extend to the application of violence against persons on board an aircraft in flight from outside the aircraft.

As in the case of the other offences created by the Montreal Convention the conduct must be unlawful. This requirement

excludes from the scope of the offence conduct which is legally justifiable or done with legal authority. It is unclear which system of law should govern such questions. However, it seems that such conduct would certainly fall outside the scope of the offence if it was justifiable under the law of the State of registration.

The requirement that the act should be intentional also applies in the case of all five offences. However it is clear from the wording of Article 1(1) that the requirement applies only to the acts performed and not to their consequences. If the relevant acts were intentionally performed it is immaterial whether the consequences were intended consequences. Furthermore, save in the case of the offences established under Article 1(1) (b)(e), it is not necessary that the consequences should actually occur; it is sufficient that they are likely consequences.

An aircraft is in flight for the purposes of the Montreal 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. 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 with the wider of the

two definitions employed in the Tokyo Convention.

- (b) A person commits an offence within Article 1(1)(b) if he unlawfully and intentionally 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. The destruction or damage must occur at a time when the aircraft is in service. An aircraft is in service for the purposes of the Montreal Convention 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 during which an aircraft is in service includes the entire period during which it is in flight within the meaning of the Convention. (Article 2(b).) The period during which an aircraft is to be regarded as in service is unduly restricted and it is particularly regrettable that the offence created by Article 1(1)(b) does not extend to acts of sabotage against aircraft performed before this period commences. However, it is possible that a person might at a time before the aircraft is in service set in train a course of events which result in destruction or damage when the aircraft is in service. This, it seems, would constitute an offence within Article 1(1)(b).

The offence is not limited to the conduct of persons on board the aircraft. The offence includes acts of sabotage to an aircraft in service before the flight commences, provided the aircraft is in service, 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) A person commits an offence within Article 1(1)(c) if he unlawfully and intentionally places or causes to be placed on an aircraft in service, by any means whatsoever a device or substance which is likely:

- (i) to destroy that aircraft; or
- (ii) to cause damage to it which renders it incapable of flight; or
- (iii) to cause damage to it which is likely to endanger its safety in flight.

This provision is primarily intended to cover cases where explosives are placed on board aircraft. The words "device or substance" are probably sufficiently wide to include most cases which are likely to arise. It seems that the offence may be committed by introducing the device or substance into the aircraft or by attaching it to the outside of the aircraft. However, the provision requires that the device or substance

be placed or caused to be placed on an aircraft in service. It is not clear if an offence is committed when the device or substance is placed on an aircraft before the period of service commences and remains there during the period of service. The better view seems to be that it is. If it is not, it seems that scope of the offence is severely limited and that the restricted definition of "in service" creates an important gap in the scheme of the Convention.

(d) A person commits an offence within Article 1(1)(d) if he unlawfully and intentionally 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. The air navigation facilities must be used for international air navigation. This provision is largely self-explanatory. It seems that the air navigation facilities may be on the ground, at an airport or elsewhere, and, possibly, on board aircraft. In order that the offence should be committed it is not necessary that the safety of an aircraft in flight should in fact be endangered; it is sufficient that that is a likely consequence. The provision is probably sufficiently wide to include the jamming of radio signals emitted from air navigation facilities.

(e) A person commits an offence within Article 1(1)(e) if he communicates information which he knows to be false, thereby endangering the

safety of an aircraft in flight. This provision is intended to cover cases where false signals are relayed to an aircraft with the purpose of diverting it from its intended course. However, it should be noted that such conduct will constitute an offence within Article 1(1)(e) only if the safety of an aircraft in flight is endangered thereby.

By virtue of Article 2(a) any person who attempts to commit any of the offences considered above also commits an offence.

The Convention makes express provision for the liability of accomplices. An accomplice of a person who commits or attempts to commit an offence under the Convention himself commits an offence. (Article 2(b).) Whereas under the Hague Convention the conduct of the accomplice must take place on board the aircraft if it is to constitute an offence, there is no such restriction under the Montreal Convention.

Jurisdiction

The jurisdictional provisions of the Montreal Convention are very similar to those of the Hague Convention.

Each contracting State is required to take such measures as may be necessary to establish its jurisdiction over the offences in the following cases:

- (i) When the offence is committed against or on board an aircraft registered in that State (Article 5(1)(b));

(ii) 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));

(iii) 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 (Article 5(1)(d)).

These three situations correspond to those in Article 4(1)(a), (b) and (c) of the Hague Convention which have been considered in detail above. However, whereas under the Hague Convention the offence could be committed only by a person on board an aircraft, the offences under the Montreal Convention are not so limited. Consequently the jurisdictional provisions under the Montreal Convention are wider in that they require contracting States to establish their jurisdiction in circumstances where the offence is committed against an aircraft by a person or persons not on board the aircraft. The provision appears to include conduct which takes place exclusively in the territory of another State. For example, a contracting State is required to establish its jurisdiction over the offences committed when an aircraft registered in that State is attacked by the use of ground-launched missiles while flying through the airspace of another State.

The fact that the offences under the Montreal Convention may be committed by a person or persons not on board the aircraft is reflected by Article 5(1)(a) which requires contracting States to take such measures as may

be necessary to establish their jurisdiction over the offences when committed in their territory.

The Montreal Convention imposes a duty on each contracting State to establish its jurisdiction over offences in the case where the alleged offender is present in its territory and it does not extradite him to:

- (a) the State in whose territory the offence was committed; or
- (b) the State or registration of the aircraft; or
- (c) the State in which the aircraft on board which the offence was committed landed with the alleged offender still on board; or
- (d) the State where a person, to whom the aircraft on which the offence was committed was leased without crew, has his principal place of business or, if he has none, where he has his permanent residence. (Article 5(2).)

This provision corresponds closely to Article 4(2) of the Hague Convention which has been considered in detail above. It should be noted, however, that the offences to which Article 5(2) relates do not include the offences created 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).

In the draft Convention it was proposed that the State in which the effects of the offences were felt should also be required to establish its jurisdiction. This proposal was not accepted. While an effects theory is

frequently invoked in certain jurisdictions, especially in the United States, as a basis of jurisdiction it is suggested that it is inherently vague and ill-defined and that its omission from the Montreal Convention is welcome. The detailed jurisdictional provisions of the Convention appear to be sufficiently wide in their ambit to meet the mischief contemplated by the Convention.

The Convention expressly provides that its jurisdictional provisions do not exclude any criminal jurisdiction exercised in accordance with national law. (Article 5(3).) This provision corresponds with Article 4(3) of the Hague Convention and Article 3(3) of the Tokyo Convention.

As in the case of the Tokyo Convention and the Hague Convention, the Montreal Convention makes no provision for priority of competing jurisdictions.

Duties of contracting States

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

The duties of contracting States in the matter of the custody of alleged offenders, preliminary inquiries, and communication with other States are virtually identical to those under the Hague Convention. (Article 6.)

Article 7 provides that a contracting State in whose territory 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. (Article 7.) This provision is identical to that in the Hague Convention.

Article 11 which governs mutual assistance in criminal proceedings is virtually identical to Article 10 of the Hague Convention.

The duties of contracting States in the matter of reporting to I.C.A.O. correspond exactly with those under the Hague Convention (Article 13). The parallel provisions of the Hague Convention have been considered in detail above.

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

Contracting States which establish joint air transport operating organisations or international operating agencies, which operate aircraft which are subject to joint or international registration are required to designate which State shall have the attributes of the State of registration for the purpose of the Convention. (Article 9.) Notice of this designation must be given to I.C.A.O which is required to communicate it to other contracting States.

Extradition

The provisions of the Montreal Convention in

relation to extradition (Article 8) are identical to those contained in Article 8 of the Hague Convention which has been considered in detail above. The conclusions stated there apply equally to the Montreal Convention.

Final Clauses

The Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America are the Depositary Governments of the Hague Convention. The Depositary Governments are required to inform promptly 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 the Convention and other notices.(Article 15(5).)

The procedures to be followed in acceding to the Hague Convention are considered below.

A contracting State may denounce the Convention by written notification to the Depositary Governments. Denunciation takes effect six months following the date on which notification is received by the Depositary Governments (Article 16).

The Convention provides that any dispute between two or more contracting States concerning the interpretation or application of the Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organisation of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court, (Article 14(1).) However, a contracting State may

at the time of signature, ratification or accession enter a reservation declaring that it does not consider itself bound by Article 14(1). Such a reservation operates on a reciprocal basis (Article 14(2).) A contracting State may withdraw a reservation by notification to the Depositary Governments. (Article 14(3).)

Procedures on accession

The Montreal Convention is open to accession at any time by any State which did not sign the Convention before it came into force on 26 January 1976. (Article 15(1).) The instrument of accession must be deposited with the Depositary Governments, namely the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America. (Article 15(2).) The Convention enters into force for an acceding State thirty days following the date of deposit of its instrument of accession. (Article 13(4).)

Unlike the Tokyo Convention, the Hague Convention includes no prohibition on reservations. Consequently, before accession can be effected it will be necessary to decide whether the accession is to be subject to a reservation. If it is intended to accede subject to a reservation, the reservation should be communicated in writing to the Depositary Governments not later than the time of accession. The most convenient course is that the instrument of accession should include the terms of the reservation.

A number of newly independent Commonwealth States are entitled to accede to the Hague Convention which was ratified by the United Kingdom "in respect of the United Kingdom of Great Britain and Northern Ireland and Territories under the territorial sovereignty of the United Kingdom as

well as the British Solomon Islands Protectorate." Papua New Guinea has formally succeeded to the Convention. It is not possible in the context of this document to consider in detail the question of State succession in respect of treaties. However, it should be noted that the position of each newly-independent State in this regard, and in particular the question of provisional succession, will vary according to the practice of that State on independence.

Legislation will be necessary to give effect to the Convention. In the United Kingdom this was provided by the Protection of Aircraft Act 1973 (1973 c.47). A draft Bill is produced in Appendix 9.

By virtue of the Protection of Aircraft Act (Overseas Territories) Order 1973 (S.I. 1973 No. 1757) Part 1 and sections 19 and 26 of the Protection of Aircraft Act 1973 as modified and adapted by that Statutory Instrument were extended to a number of Territories including the following which have since attained independence:

Belize	Gilbert and Ellice Islands
British Solomon Islands	Colony
Protectorate	Seychelles