

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 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 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 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.