



AIRCRAFT HIJACKING AND INTERNATIONAL LAW. By S.K. Agarwala. 1973. N.M. Tripathi, Bombay. Pp. 242. Rs. 25.

UNLAWFUL SEIZURE of aircraft, popularly known as hijacking or skyjacking, has become a pastime of men of mental depravity, fugitive criminals and political offenders for the last one and a half decades and caused hazards to innocent passengers, wanton destruction of property and disruption of civil aviation. Threatened by the jeopardy, members of the International Civil Aviation Organization (ICAO), a specialized agency of the United Nations Organization, have adopted the Convention for the Suppression of Unlawful Seizure of Aircraft, signed in 1970 at the Hague and ratified in 1971 (hereinafter referred to as the Hague Convention).

The need for a separate convention for prevention of hijacking arose when the incidence of hijacking assumed phenomenal proportions during 1969–1971. Moreover, the existing legal machinery, *i.e.*, the Convention on Offences and Certain other Acts Committed on Board Aircraft, (concluded on 14 September, 1963) ratified in 1969, is without “teeth” as its article dealing with hijacking, does not declare hijacking to be an offence. Therefore, the Hague Convention was drafted with the object of prosecuting and punishing hijackers.

This book had first seen daylight in 1971, when it was presented as a paper at the annual conference of the International Law Association, Regional Branch (India), held in Delhi in 1971, under the title ‘Suppression of Aircraft Hijacking and the Hague Convention, 1970’. This paper was later developed to its present form.

This book is a commentary on the provisions of the Hague Convention and consists of the following chapters : I. ‘Some Distinctive Characteristics of the Offence of Aerial Hijacking’ ; II. ‘Definition of the Offence and Scope of the Hague Convention’ ; III. ‘Jurisdiction’ ; IV ‘Extradition of Hijackers’ ; V. ‘Prosecution of Hijackers’ ; VI. ‘Other Obligations under the Hague Convention’ ; VII. ‘Internationalisation of the Offence of Hijacking’ ; VIII. ‘Montreal Convention of 1971—Acts of Sabotage and Armed Attacks’ IX. ‘Other Work Done in the ICAO, UN, and Regional Organisation’ ; X. ‘The Hijacking of the Indian Airline Plane to Pakistan, and the Aftermath’ ; and XI. ‘Enforcement Provisions—A Necessity’. In addition to these, it contains a conclusion, appendices and index. The author has heavily relied upon several documents produced by the ICAO, General Assembly, the Council and the Legal Committee, apart from the secondary material which he has referred to here and there. But he has nowhere referred to the documents of the Hague Conference, *viz.*, International Conference on Air Law, the Hague, December 1970, ICAO Doc. 8979—LC/165—1 and 2. The reason for this is not known. However, he has displayed considerable skill in accomplishing the task.



Unlawful seizure of aircraft is defined in article 1 of the convention as seizure or exercise of control over aircraft in flight by use of unlawful force or threat or any other form of intimidation. The convention declares not only acts of hijacking but also attempts thereof to be offences. Not only the principal offender but also the accessory is punishable under the convention. But the definition is, the author rightly points out, defective in several respects. For instance, hijackings committed on board aircraft at rest, aircraft engaged in domestic flights, and aircraft engaged in military, customs or police services, do not fall within the ambit of the convention. So, the author criticizes the framers of the convention for non-inclusion of domestic flights in the definition of the offence. Inclusion of domestic flights, in the definition would not have, the conference felt, secured even the minimum number of ratifications required to bring the convention into force, and therefore they were rightly left out of the convention.

Again, the author is very much critical about the provisions relating to jurisdiction over the offence. Like the Tokyo Convention of 1963, the Hague Convention adopts a concurrent system of jurisdiction without fixing any priorities among the several states involved, namely, the state of registry of aircraft, the state wherein the aircraft lands and, in the case of aircraft under lease, the state of the lessee. Fixation of priorities of jurisdiction without any obligation for compulsory extradition of the alleged offender would not be effective. The conference was therefore left with the only alternative of concurrent jurisdiction. Moreover, the adoption of such a system is not devoid of reason, for there would be at least one state interested in prosecuting the alleged offender.

One of the interesting chapters in this book is chapter IV, 'Extradition of Hijackers'. Article 8 of the convention provides for extradition of fugitives. It makes hijacking extraditable under any extradition treaty existing between contracting states; it imposes an obligation on the parties to the convention to include the offence as an extraditable offence in all future extradition treaties between them; and it creates a machinery for extradition of fugitive hijackers between the contracting parties with or without extradition arrangements. Further, in order to facilitate extradition of hijackers to any of the states entitled to exercise jurisdiction over the offence, whether the offence is committed in it or not, it creates a legal fiction whereby the offence shall be deemed to have been committed not only in the territory of the state in which it is committed but also in that of any other state which is required to establish jurisdiction over the offence. Advertently or inadvertently, the convention does not set up any machinery for the purpose of resolution of conflicts arising out of simultaneous requests for extradition. "This difficulty could have been avoided", the author comments, "if priorities regarding jurisdiction over the offence, amongst the interested states, were fixed...by the Convention itself". The rendition of a fugitive is regulated by the domestic law of the requested state and it appears that most of the municipal legislations relating to



extradition invariably contain a provision for settlement of disputes arising out of simultaneous requests for extradition of a fugitive. So, it seems that there is hardly any need for fixation of priorities.

Political offences constitute, it is almost universally recognized, an exception to the principle of extradition of fugitives. Consequently, extradition provisions in the convention lose their efficacy. To save the convention from falling into desuetude, the author's endeavour to establish hijacking as a non-political offence is highly commendable. In fact, he invokes the aid of decisions of municipal courts, the Genocide Convention of 1948, and the U.N. Declaration on Territorial Asylum, which do not recognize offences against innocent persons, or general acts of anarchy and terrorism, or acts whose predominant character is criminal as political offences.

Writing about the other obligations of states under the Hague Convention, the author points out the defects, patent as well as latent, in the dispute settlement procedure. The author's critical remarks of the provisions bear testimony to his remarkable skill in the matter of interpretation of international legal documents.

In sum, the author's approach towards the prevention or punishment of this international vandalism deserves applause and his recommendations for rectification of the drawbacks in the Hague Convention deserve serious consideration. While general readers may not like too much documentation in the book, it has immense research value.

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