THE HIJACKING AND PROTECTION OF AIRCRAFT ACT, 1978 (No. 9)*

I. INTRODUCTION

The Hijacking and Protection of Aircraft Act, 1978,[1] was enacted to give effect in Singapore to two international Conventions which are designed to deal with problems relating to the safety of international civil aviation. These two conventions are the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft[2] and the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation[3] (hereinafter referred to as the Hague Convention and the Montreal Convention, respectively).

The Hague Convention is designed to deal with the problem of "hijacking", or unlawful seizure of aircraft. The Montreal Convention is aimed primarily at combating acts other than hijacking which threaten the safety of international civil aviation, such as the sabotage of aircraft and air navigation facilities. The two Conventions define certain offences, and provide that certain states shall have the right to establish jurisdiction over such offences. Contracting States are obligated under the Conventions to make such offences punishable by severe penalities, and to take such measures as may be necessary to establish their jurisdiction over such offences. The Conventions also contain provisions designed to provide for the prompt adjudication, extradition and punishment of alleged offenders.

From the standpoint of international law, the most interesting problem dealt with by the Conventions is that of jurisdiction over the offences. The Conventions extend the right to establish jurisdiction over the offences to states which would not have had such a right under the rules of customary international law. The analysis of the Hijacking and Protection of Aircraft Act, 1978 will focus primarily on the question of jurisdiction, especially on the extension of Singapore law to cover acts committed outside the territorial jurisdiction of Singapore. In this regard, the Hijacking and Protection of Aircraft Act must be viewed together which its companion Act, the Supreme Court of Judicature (Amendment) Act, 1978.[4] This Act amended section 15(1) of the Supreme Court of Judicature Act in order to provide that the

* The text of this Act is reproduced on pp. 187-191, *ante*.

1 The Act came into operation on April 8, 1978 (G.N. No. S 82/78).

2 Misc. 5 (1971), Cmnd. 4577, 10 I.L.M. 133 (1971). The Convention was signed at the Hague on December 16, 1970, and it came into force on October 14, 1971. The text is reproduced on pp. 195-200, *ante*.

3 Misc. 26 (1971), Cmnd. 4822, 10 I.L.M. 1151 (1971). The Convention was signed at Montreal on September 23, 1971, and it came into force on January 26, 1973. The text is reproduced on pp. 200-206, *ante*.

4 No. 10 of 1978. The Act came into operation on April 8, 1978 (G.N. No. S 83/78).

High Court shall have the power to try all offences committed "by any person within or outside Singapore where the offence is punishable under and by virtue of the provisions of the Hijacking and Protection of Aircraft Act, 1978".

To put the Conventions and the Act in their proper context, it is necessary first to review the principles of customary international law relating to the power of a state to exercise criminal jurisdiction over the acts of aliens which occur outside its territorial jurisdiction.

II. CRIMINAL JURISDICTION UNDER CUSTOMARY INTERNATIONAL LAW

The principles of customary international law concerning jurisdiction are in some respects uncertain because the practice of states is not uniform, and because writers are often unclear as to the exact definition they are using when referring to "jurisdiction". Some writers, including O'Connell,[5] claim that the definitional problem can be resolved if one distinguishes between two types of jurisdiction — jurisdiction to prescribe, and jurisdiction to enforce. Jurisdiction to prescribe refers to the capacity of a state to make a rule of law, or in the context of criminal law, to make a certain act illegal. Jurisdiction to enforce refers to the capacity of a state to enforce a rule of law. Jurisdiction to enforce is described as inherently territorial, as it is clear under customary international law that no state may attempt to enforce its criminal laws in the territory of another state. When we refer to jurisdiction to prescribe in the area of criminal law, we refer to the power of a state to legislate with respect to acts committed outside its territorial boundaries. Such a state may claim jurisdiction to prescribe despite the fact that the offender will be immune from its enforcement procedures if he remains outside the territory of the prescribing state.

The limitations on the jurisdiction which a state may prescribe for itself are unclear. Some writers claim there are little or no limitations.[6] Others claim that there are limitations, and maintain that there must be some link between either the offence or the offender and the state claiming jurisdiction. They usually concede, however, that it is difficult to clearly define the necessary link.[7] There is general agreement that on the basis of the "nationality principle", a state has the right to extend the application of its laws to cover the acts of its citizens or nationals, even with respect to events occurring entirely abroad. This is often referred to as personal jurisdiction.

The difficult question is the extent to which international law permits a state to exercise jurisdiction over the acts of aliens which occur outside its territorial jurisdiction. Under customary international law, the following principles have been advanced as grounds of criminal jurisdiction over the acts of aliens abroad:

(1) *Objective Territorial Principle.* According to this principle acts done outside a jurisdiction, but intended to produce and producing

5 D.P. O'Connell, *International Law,* Vol. II (2nd ed. 1970), pp. 602-603.
6 J.G. Starke, *Introduction to International Law,* (8th ed. 1977), p. 263.
7 D.W. Greig, *International Law* (2nd ed. 1976), pp. 211-212.

harmful "effects" within it, justify a stats in exercising jurisdiction over the alleged offender.

(2) *Protective Principle.* According to this principle, a state may exercise extra-territorial jurisdiction over crimes of aliens directed against its security, political independence, or territorial integrity.

(3) *Passive Personality Principle.* According to this principle, a state claims the right to punish aliens for acts committed abroad which injure its own nationals.

(4) *Universality Principle.* According to this principle, a state may exercise jurisdiction over certain offences which, because they are contrary to the interests of all nations, are considered to be under the jurisdiction of all states, wherever committed, and whatever the nationality of the perpetrators. All writers agree that piracy comes within this principle. Others maintain that war crimes, genocide and slave trading also come within this category.

The major reason for the lack of consensus in the international community on the question of the exercise of jurisdiction is that the practice of states is not uniform. The territorial principle is deep-rooted in Common Law countries, and they are reluctant to accept other principles as bases for jurisdiction. Civil law countries have a different historical tradition, and have more often passed legislation extending their criminal laws to cover the acts of aliens abroad on the basis of one or more of the principles above.

Writers claiming that there is little or no limit on the power of a state to extend its jurisdiction cite as authority the decision of the Permanent Court of International Justice in the *Lotus Case.*[8] The Court stated in that case that international law left a wide measure of discretion to states to decide for themselves how far they should extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory. On the question of burden of proof, the Court held that the onus lay on the state claiming that such exercise was unjustified to demonstrate the existence of a prohibitive rule of international law precluding the state from exercising jurisdiction in such circumstances.

Two points should be noted, however. First, the language in the *Lotus Case* has been criticized by some writers.[9] Second, writers almost always list specific bases of jurisdiction, under the principles above, thus implying that the exercise of jurisdiction without such bases would be contrary to international law.[10]

III. HISTORICAL BACKGROUND OF THE PROBLEM CONCERNING JURISDICTION OVER CRIMES COMMITTED ABOARD AIRCRAFT

The Hague Convention and the Montreal Convention are the most recent attempts by the international community to solve the problems

[8] *The Lotus Case* (1927) P.C.I.J. Reports, Series A, No. 10.
[9] Brierly, "The Lotus Case" (1928) 44 L.Q.R. 154 at pp. 155-156.
[10] Akehurst, "Jurisdiction in International Law" (1972-1973) 46 Brit. Year Book Int. L. 145 at p 167.

relating to the safety of international civil aviation. The first such attempt was the 1963 Tokyo Convention on Offences and Certain other Acts Committed on Board Aircraft.[11] One of the primary objectives of the Tokyo Convention was to attempt to solve the difficult problems of jurisdiction in respect of offences committed on board aircraft in flight. Under general principles of customary international law, a state has jurisdiction over crimes committed within its territory. Therefore, the subjacent state has jurisdiction over crimes committed aboard aircraft flying in its airspace. This rule was inadequate for crimes committed aboard aircraft because the subjacent state was often unable or uninterested in exercising jurisdiction when the aircraft was merely flying over its territory, and because aircraft flying over the high seas were outside the territorial jurisdiction of any state. The Tokyo Convention established a positive rule of international law with respect to jurisdiction as between the Contracting States. Under this rule, the state of registration of an aircraft may exercise jurisdiction over offences committed on board that aircraft when it is: (1) in flight; (2) on the surface of the high seas; or (3) in any other area outside the territory of any state. The Tokyo Convention ensured that the state of registration of an aircraft is always competent to exercise jurisdiction even though the aircraft leaves the state's territory, and yet allows other states to exercise concurrent jurisdiction.

The other main provisions of the Tokyo Convention were that it obligated the state of landing of a hijacked aircraft to take the following actions: (1) to restore control of the aircraft to its rightful commander; (2) to take the alleged hijacker into custody; (3) to permit the passengers and crew to continue their journey as soon as practicable; and (4) to return the aircraft to the persons lawfully entitled to possession. In addition, the Convention made more certain the powers and authority of aircraft commanders over persons committing crimes aboard their aircrafts in flight.

The Tokyo Convention proved to be inadequate because its provisions regarding unlawful seizure and interference with aircraft were weak and ineffective. It failed either to define any offences, or deal adequately with the problems of prosecution, extradition and punishment of alleged offenders.

The Tokyo Convention Act 1971 (No. 12 of 1971) was enacted in Singapore in order to enable the Singapore Government to ratify the 1963 Tokyo Convention. Under this legislation Singapore extended its criminal jurisdiction to any act or omission taking place on board a Singapore registered aircraft while in flight elsewhere than in or over Singapore. The Act also included provisions on the other matters required under the Convention.

Prior to the passage of the Hijacking and Protection of Aircraft Act 1978, Singapore, like most states., had no special law relating to hijacking or to the unlawful interference with aircraft. If any hijacking case had arisen where Singapore could exercise jurisdiction because the alleged acts were carried out either within the territorial jurisdiction of Singapore or aboard Singapore registered aircraft, the alleged

[11] Cmnd. 4230, T.I.A.S. 6768, 58 Am. J. Int'l. L. 566 (1964). The Convention entered into force on December 4, 1969.

offenders could not have been prosecuted for "hijacking", but only for violation of other laws in force in Singapore.

This was the state of the law in Singapore in 1977 when several Vietnamese citizens hijacked a Vietnamese registered aircraft in Vietnamese airspace, killed a crew member in the process, and then landed in Singapore. Singapore had no jurisdiction over the murder because it was committed on a foreign aircraft outside Singapore's territorial jurisdiction. The only way Singapore could exercise jurisdiction and prosecute the alleged hijackers for offences related to the hijacking, such as kidnapping, would be to argue that such offences were of a continuing nature and that although they may have begun outside the territorial jurisdiction of Singapore, they continued after the alleged offenders entered the territorial jurisdiction of Singapore. The end result of the 1977 Vietnamese hijacking incident was that hijackers were prosecuted and convicted for offences which they committed after they entered Singapore's territorial jurisdiction.

With the passage of The Hijacking and Protection of Aircraft Act, 1978 and the ratification of the Hague Convention and the Montreal Convention, Singapore authorities now have more authority to exercise jurisdiction over and prosecute any aircraft hijackers entering Singapore in the future.

IV. THE 1970 HAGUE CONVENTION

The Hague Convention sought to provide prompt prosecution, extradition and punishment of alleged hijackers. In article 1 the Convention defines the offence of unlawful seizure of aircraft. (It is not called "hijacking", but merely referred to as "the offence"). Article 3 of the Convention makes it clear that it is designed only to protect the safety of "civil" aviation, as article 3(2) provides that, "This Convention shall not apply to aircraft used in military, customs or police services". In addition article 3 makes it clear that for general purposes the Convention is not intended to be applicable to hijackings which occur solely within the jurisdiction of the state of registration of the aircraft. Thus, article 3(3) provides that the Convention does not generally apply where the point of take-off of a hijacked aircraft and the point of actual landing are within the territory of the state of registration of the aircraft.

Under article 4(1), all parties to the Hague Convention are obligated to take measures to establish their jurisdiction over alleged offenders in certain cases. First, Contracting States are to establish jurisdiction over "the offence" (hijacking) and any other "act of violence" against passengers or crew in connection with "the offence" in the following three situations:

(*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.

The most important development in this article is that it confers jurisdiction on the state of landing, even though such state may have no other link to the commission of the alleged offence.

In addition, article 4 contains another unusual provision regarding jurisdiction over the hijacking. Article 4(2) grants jurisdiction over the offence of hijacking to any Contracting State within whose boundaries the alleged offender is present, once that state has chosen not to extradite him to any of the three states listed in article 4(1)(a), *(b)* and (c) *(ante).* In such a case, no connection or link between the state and the alleged hijacker need be established other than his presence within its boundaries and its refusal to extradite him. This provision thus seems to confer "universal jurisdiction" to all Contracting States over the offence of hijacking, and is analogous in this respect to piracy on the high seas.

The above provision is related to the articles 6 and 7 of the Convention, under which the Contracting State in whose territory the alleged offender is present, is obligated to take him into custody, and if it does not extradite him, to submit the case to its competent authorities for prosecution. Articles 6 and 7 are applicable even in cases where the place of take-off and place of landing are both within the territory of the state of registration. Finally, each Contracting State is obligated under article 2 of the Convention to make the offence of hijacking punishable by severe penalties.

V. THE 1971 MONTREAL CONVENTION

While the Hague Convention is primarily concerned with the unlawful seizure or hijacking of aircraft, the Montreal Convention attempts to resolve the problem of acts of sabotage, acts of violence, and certain other acts which interfere with the safety of international civil aviation. The Montreal Convention attempts to achieve its objectives by carefully defining certain offences, by extending the authority of states under international law to exercise jurisdiction over such offences, and by providing for the prompt arrest, prosecution, extradition and punishment of offenders.

Article 1 of the Montreal Convention defines and enumerates five offences of unlawful interference with aircraft. They relate to the following: (a) acts of violence against a person on board an aircraft in flight; (b) the destruction or damage of aircraft; (c) the placing of incendiary devices on board an aircraft; (d) destruction or damage of air navigation facilities; and (e) the communication of false information. For all five offences, the acts must be both unlawful, intentional, and of such a nature that they are likely to endanger the safety of an aircraft in flight. In addition, attempt and complicity are treated the same as the actual offence. A major difference from the Hague Convention, is that the offenders, or their accomplices, need not be on board the aircraft.

The limits on the applicability of the Convention are contained in article 4, and they are similar to those of the Hague Convention. The Convention is not applicable to aircraft used in military, customs or police services. Also, it is not applicable for general purposes when the offence occurs solely within the territory of the state of

registration of the aircraft. In the case of the destruction or damage of air navigation facilities, the Convention is not applicable unless such facilities are used in international air navigation.

Under article 5 of the Convention, each Contracting State is obligated to take measures to establish its jurisdiction over the offences in four specific cases. The first is when the offence is committed in the territory of that state. The other three are the same as those enumerated in the Hague Convention,[12] except that offences (a) and (c) may be committed "against" as well as "on board" the aircraft.

Like the Hague Convention, the Montreal Convention also establishes "universal jurisdiction" over certain of the offences enumerated in the Convention. Section 5(2) grants jurisdiction to any Contracting State within whose boundaries the alleged offender is present, once that state has chosen not to extradite him, but only for the first three of the five offences enumerated in article 1.[13]

The result of the jurisdictional provisions of the Montreal Convention is similar to that of the Hague Convention; namely, that the following four states are specifically granted the right to exercise concurrent jurisdiction over an alleged offender: (1) the state within whose territorial boundaries, including airspace, the offence is committed; (2) the state of registration; (3) the state of landing, if the aircraft lands with the offender on board; (4) for certain offences, any party to the Conventions within whose territory the alleged offender is present. In addition, both the Hague and Montreal Conventions provide that they do not "exclude any criminal jurisdiction exercised in accordance with national law". This provision seems to contemplate that some states may enact national legislation which establishes jurisdiction over the alleged offenders pursuant to one of the additional bases of jurisdiction recognized under international law, such as the protective principle, the nationality principle, or the passive personality principle.

The Montreal Convention also contains provisions similar to the Hague Convention relating to the obligations of the Contracting States to arrest, prosecute, extradite and punish offenders, including the obligation to make the offences punishable by severe penalties.

VI. ANALYSIS OF THE ACT

In the "Explanatory Statement" to The Hijacking and Protection of Aircraft Bill is a comparative table listing the source of each of the clauses or sections. This table indicates that the Bill was modelled after two English Acts: The (U.K.) Hijacking Act, 1971, which was passed to give effect to the Hague Convention, and the (U.K.) Protection of Aircraft Act, 1973, which was passed to give effect to the Montreal Convention. Since many of the provisions of the Singapore Act are exactly the same as the relevant provisions of the U.K. Acts, the analysis here applies equally to the U.K. Acts.

[12] See, *supra.*
[13] See, *supra.*

Section 3: The Offence of Hijacking

Section 3 of the Act creates the offence of hijacking, and makes it "an offence under this Act", punishable with imprisonment for life in accordance with section 8. The offence of hijacking is defined in essentially the same language as the definition of "the offence" in article 1 of the Hague Convention. The section is drafted in such a manner as to have the widest possible extra-territorial application. It makes it clear that it is an offence if the requirements in the definition are satisfied, whatever the nationality or citizenship of the alleged offender, "whatever the State in which the aircraft is registered and whether the aircraft is in Singapore or elsewhere". In other words, it provides that any hijacking anywhere is an offence under Singapore law, even if there is no link whatsoever between Singapore and either the alleged offender or the alleged offence.

The question arises as to whether this extremely wide prescription, covering acts of aliens abroad without any limitation, is consistent with international law. Two arguments can be advanced in support of the section. First, the legal basis or justification for the section is found not in principles of customary international law but in article 4 of the Hague Convention. Under article 4 a Contracting State is obligated "to take such measures as may be necessary" to establish its jurisdiction over the offence in the three situations in paragraph 1, as well as when the alleged offender comes into its territory. The precise method by which it must fulfill this obligation is not set forth. Section 3 of the Singapore Act is the broadest means possible by which Singapore could establish its jurisdiction. It ensures that it will be able to exercise jurisdiction over the alleged offender in any of the cases in article 4 of the Hague Convention, including the case when an alleged offender comes into Singapore. The basis for establishing such jurisdiction is not to be found in the principles of customary international law, but in the Hague Convention.

The second argument that can be advanced in support of the section is that it is consistent with principles of customary international law. In this case the distinction between jurisdiction to prescribe and jurisdiction to enforce is important. It can be argued that a state has jurisdiction to prescribe laws concerning the offence of hijacking under the authority of the *Lotus Case*[14] and the Hague Convention. Its jurisdiction to enforce such laws will be limited to those cases where the alleged offender is present in its territory, or in any of the other situations in article 4.

As stated earlier, the Hague Convention expressly states that it shall not apply to aircraft used in military, customs or police service. Under subsection 3(2) of the Act, it is stated that the hijacking provisions of subsection 3(1) shall not apply unless one of the following conditions are met: (1) the alleged offender is a Singapore citizen; (2) the act is committed in or over Singapore; or (3) the aircraft is used in the military, customs or police service of the Republic of Singapore. The exercise of jurisdiction by Singapore in such cases is consistent with the bases or principles of jurisdiction whereby a state can extend its criminal jurisdiction over acts which take place

[14] *Supra,* note 8.

outside its territorial boundaries. The first condition is based upon the nationality principle, under which a state can assume jurisdiction over the acts of its citizens or nationals outside its own territory. The second condition is an example of the territorial principle. The third condition is analogous to Singapore being the state of registration. It perhaps could also be justified under the "protective principle", under which a state may exercise jurisdiction over crimes against its security or integrity.

Section 4: Violence Against Passengers or Crew

Section 4 of the Act provides that if a person commits an "act of violence" against the passengers or crew of any aircraft in flight in connection with the offence of hijacking, such act of violence shall, for the purpose of conferring jurisdiction, be deemed to have been committed in Singapore. "Act of violence" is defined in section 2 to include any act done in Singapore which would constitute murder, attempted murder or certain other specified offences under Singapore law. The section provides that it is applicable to all such acts, "wherever the act of violence was committed, whatever the state of registration of the aircraft and whatever the nationality or citizenship of the offender."

This section is modelled on section 2 of the (U.K.) Hijacking Act, 1971, with some modifications. Its purpose is apparently to fulfill the obligation under article 4(1) of the Hague Convention, under which each Contracting State is obligated to establish its jurisdiction over the offence (of hijacking) "and any other act of violence against passengers or crew committed by the alleged offender in connection with the offence". This obligation under the Hague Convention is to apply only in the three specified cases discussed above (state of registration, state of landing, or principal place of business of lessee) where there is a clear link or connection between Singapore and the alleged offence.

It should be noted that under the Hague Convention the mere presence of the alleged offender in Singapore would not give Singapore a sufficient link or connection to exercise jurisdiction over the offender. Under the Hague Convention, it is only "the offence" (of hijacking) which becomes a "universal" crime. Article 4(2) relating to jurisdiction of a Contracting State where the alleged offender is "present in its territory" is therefore limited to the offence of hijacking. It does not include other acts of violence against passengers or crew in connection with the offence of hijacking.

Section 4 of the Act, however, appears to establish jurisdiction over such acts of violence which occur anywhere in the world if they are connected with the offence of hijacking. Section 4 gives the Singapore authorities the power to exercise jurisdiction over an alleged offender if he comes into Singapore, even if there is no other link or connection between Singapore and the alleged offender or the alleged offence. In this sense, the jurisdiction established by Singapore over such acts of violence is broader than that authorized under the Hague Convention.

If the jurisdiction established by Singapore under section 4 is broader than that it is obligated to establish under article 4 of the

Hague Convention, the next question would be whether the jurisdiction established under section 4 is permissible under paragraph 3 of article 4 of the Hague Convention, which states that, "This Convention does not exclude any criminal jurisdiction exercised in accordance with national law." The question which arises here is whether the additional establishment of jurisdiction by Singapore is contrary to international law if there is no basis for the establishment of such jurisdiction under one of the principles of customary international law discussed above. As stated earlier, most writers claim that some link or connection is necessary for a state to extend its jurisdiction extra-territorially in this manner. The Hague Convention could be used as a legal basis for exercising such jurisdiction in the three specified cases, including the case when Singapore is the state of landing. Perhaps the nationality principle, protective principle, or passive personality principle could be invoked to justify the extension in certain other cases, such as when the alleged offender is a citizen or national of Singapore, or when the alleged acts threaten the safety of Singapore aircraft or of civil air navigation in Singapore, or when the victims of the alleged acts are Singapore citizens. The blanket extension, however, which would allow Singapore authorities to exercise jurisdiction over an alleged offender who merely comes into Singapore, is not justified by any of these bases. It therefore can be argued that this section is in violation of international law.

On the other hand, it can be argued on the authority of the *Lotus Case* that there is no restriction on a state's jurisdiction to prescribe unless it can be shown by the most conclusive evidence that such restriction exists as a principle of international law. Some writers maintain that there is no limit under international law on the potential jurisdiction a state can assume.[15] It is only when a state attempts to exercise such jurisdiction within its territory that a question will arise as to whether its action is in violation of international law. Under this theory, no question would arise as to the legality of the Act under international law unless the Singapore authorities attempt to exercise jurisdiction over an alleged offender and to prosecute him under this section when the only connection Singapore has with the offence is that the alleged offender is present in its territory. In cases where there is a connection between Singapore and the alleged offence, such as when Singapore is the state of landing, no question of a violation of international law is likely to arise because the exercise of jurisdiction by Singapore is authorized under the Hague Convention.

It should be noted that an act of violence under section 4 is not considered to be "an offence under the Act" which is punishable by imprisonment for life. Rather, such acts are to be punishable under the law in force in Singapore applicable thereto. In some cases, the punishment for the specified act of violence may be even greater than imprisonment for life. Convictions under the Kidnapping Act,[16] and the Arms Offences Act,[17] are both punishable by death.[18] In theory, therefore, a U.S. citizen who uses a gun in attempting to hijack a

15 *Supra,* note 6. G. Schwarzenberger, *A Manual of International Law* (6th ed. 1976), pp. 77-78.
16 Cap. 101, Singapore Statutes, Rev. Ed. 1970.
17 1973 (No. 61).
18 Ss. 3 and 4, respectively.

U.S. registered aircraft enroute from New York to Washington which lands in Philadelphia is in violation of the Arms Offences Act, 1973, and subject to its death penalty. Should he later come into the territorial jurisdiction of Singapore he could be prosecuted and tried for not only the offence of attempted hijacking, but also for violating the Arms Offence Act, 1973. In such a situation, U.S. authorities could protest, claiming that Singapore has no jurisdiction under international law to prosecute the alleged offender for acts of violence against the passengers and crew, but only for the offence of hijacking.

In actual practice Singapore authorities are unlikely to receive any protests concerning this section if they limit prosecutions under it to the three cases specified in article 4(1) of the Hague Convention. It might be desirable, however, to consider amending this section so that it will be applicable only in the three cases in article 4(1) of the Hague Convention. The situation in which Singapore authorities would be most likely to want to prosecute alleged offenders under this section is when the hijacked plane lands in Singapore with the alleged offender still on board, and that situation is included in the three specified cases.

Section 5: Destroying, Damaging or Endangering Safety of Aircraft

Sections 5 and 6 of the Act deal with the five offences of unlawful interference with aircraft which are enumerated in article 1 of the Montreal Convention.

Acts of violence against a person on board an aircraft in flight are dealt with in subsection (1)(*b*), the destruction or damage of aircraft is dealt with in subsection (1)(*a*), and the placing of incendiary devices on board an aircraft are dealt with in subsection (2). These are the three offences which the Montreal Convention establishes are subject to "universal" jurisdiction similar to the offence of hijacking in the Hague Convention. All Contracting States are obligated to establish jurisdiction over these three offences not only in the four specified cases in article 5, but also if the alleged offender is present within their territorial boundaries, and they elect not to extradite him. Subsection (3) makes it clear that Singapore recognizes this universal jurisdiction, as it states the acts are offences under Singapore law whether any such act is committed "in Singapore or elsewhere, whatever the nationality or citizenship of the person committing the act or whatever the state in which the aircraft is registered".

The only exception recognized by the Act is that as a general rule it applies only to civil aviation. Subsection (4) therefore provides that the section does not apply to aircraft used in military, customs or police service unless the act is committed in or over Singapore or the person committing the act is a Singapore citizen. The Montreal Convention specifically provides that it is not applicable to aircraft used in military, customs or police service. The additional jurisdiction exercised by Singapore under this subsection is clearly permissible under international law under the "territorial principle" and the "nationality principle".

The offence defined in subsection (1)(*b*), relating to acts of violence is similar in many respects to acts of violence against passengers

and crew under section 4 of the Act. Both must be "acts of violence" as specially defined in section 2. Both must be committed by a person on board an aircraft "in flight" as specially defined in section 2. There are some differences between the sections, however. There is a major difference in result, the act of violence in section 4 being punishable according to applicable Singapore law, and the act of violence under section 5 being "an offence under this Act" which is punishable under section 8 by life imprisonment. Also, section 4 contains some requirements that are not found in section 5. First, it requires that the act of violence be done by a person in connection with the offence of hijacking. Second, the act of violence under section 4 must be directed "against the passengers or crew". Not only is there no such requirements in section 5, but in one respect the definition of the offence in section 5 is slightly different from the definition in article 1 of the Montreal Convention. Article 1 provides that it be an act of violence "against a person"; these words were not included in section 5(1)(*b*). Therefore the definition in the Act may be slightly broader in scope than that of the Montreal Convention. It will be up to the courts to decide the legal significance of this omission. The act of violence under section 5 also contains some requirements that are not found in section 4. These are that the act be both unlawful and intentional, and that the act of violence be an act which is likely to endanger the safety of the aircraft.

The most important distinction between the act of violence under the two sections relates to jurisdiction. Because the act of violence under section 5 is made a universal crime under the Montreal Convention, none of the jurisdictional problems discussed under section 4 arises. Singapore can exercise jurisdiction over an alleged offender who enters its territory, without the necessity of any connection or link between Singapore and either the alleged offender or the alleged offence. The basis for exercising such jurisdiction would be the Montreal Convention.

Section 6: Other Acts Endangering or Likely to Endanger the Safety of Aircraft

Section 6 deals with the other two offences enumerated in article 1 of the Montreal Convention. Destruction, damage or interference with the operation of air navigation facilities is dealt with in section 6 (1) and (2), and the communication of false information is dealt with in subsection (3). As with the three offences in section 5, such acts must be such that they endanger or are likely to endanger the safety of an aircraft in flight. The definition of the offence relating to the communication of false information differs in one respect from the definition in the Montreal Convention. Under the Montreal Convention, the act must be done both "unlawfully" and "intentionally". In section 6(6), however, the word "unlawfully" is omitted, as it is in the U.K. Act. It will be left for the courts to decide the significance of such omission.

Section 6(5) recognizes that there is no "universal" jurisdiction conferred by the Montreal Convention over these two offences. It provides that the provisions of subsections (1) and (3) do not apply to acts outside Singapore unless one of the following links or connections between Singapore and the act is present: (a) the alleged

offender is a Singapore citizen; (b) the aircraft endangered is registered or chartered in Singapore; (c) the act is committed aboard a Singapore registered or chartered aircraft; or (d) the aircraft lands in Singapore with the alleged offender on board. Singapore is empowered under article 5 of the Montreal Convention to exercise jurisdiction in situations (*b*), (*c*) and (*d*). Singapore is justified in exercising jurisdiction in situation (*a*) under the nationality principle.

A further limitation on the applicability of the provision relating to air navigation facilities is contained in subsection (6). This limitation is also contained in article 4(5) of the Montreal Convention. Subsection 6 provides, however, that it shall cover acts committed by Singapore citizens even if the air navigation facilities are not used in international aviation. This is a justifiable extension by Singapore of its criminal jurisdiction under the nationality principle.

Section 7: Abetting the Commission of Acts Outside Singapore

Section 7 makes it an offence for a person in Singapore to abet the commission of acts outside Singapore which would be offences under the Act but for certain exceptions. Although there is no such provision in either the Hague or Montreal Conventions, it seems to be justified under the territorial principle because the abetting takes place in Singapore.

Section 8: Penalty

Section 8 provides for a mandatory sentence of life imprisonment for persons convicted of offences under the Act. The Hague and Montreal Conventions require Contracting States to make the offences punishable by "severe penalties". This obligation is clearly satisfied by a mandatory sentence of life imprisonment.

Other states have elected not to punish all offences equally, but to provide for different punishments depending upon the severity of the offence. For example, the (U.S.) Antihijacking Act of 1974[19] provides for a penalty of death or life imprisonment if the death of another person results from the commission or attempted commission of the offence, and in other cases for a penalty of imprisonment of not less than twenty years.

VII. CONCLUSION

The Hijacking and Protection of Aircraft Act, 1978, together with its companion Act, the Supreme Court of Judicature (Amendment) Act, 1978, has greatly increased the criminal jurisdiction of Singapore over acts which are likely to endanger the safety on international civil aviation.

Singapore authorities will now have available to them the maximum number of options possible under international law in dealing with any alleged hijackers or similar offenders. In addition, the Acts will serve as evidence to the rest of the international community that

[19] Antihijacking Act of 1974, Pub. L. No. 93-366, s. 103, 88 Stat. 409-410 (1974)

Singapore is prepared to do its part in increasing the safety of international civil aviation by taking steps to ensure that any person who commits offences which threaten the safety of international civil aviation will not go unpunished should such person come to Singapore.

The problems concerning the safety of international civil aviation will never be completely eliminated, but if other nations in the region were to follow the example of Singapore by ratifying the Hague and Montreal Conventions and enacting similar domestic legislation, it would go a long way towards alleviating the problems. If all states in the region had similar laws, potential hijackers would know that they would never escape prosecution and punishment.

R. C. BECKMAN