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I assent.

(L.S.)

ĠENSU TABONE
President

9th August, 1991

ACT No. XX of 1991

AN ACT to give effect to the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo, 1963); the Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague, 1970); and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal 1971); and the Protocol to the Montreal Convention (1988).

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

Preliminary

1. This Act may be cited as the Civil Aviation (Security) Act, 1991. Short title.
2. In this Act, unless the context otherwise requires, the following expressions have the following meanings respectively, that is to say:— Interpretation.

“aircraft” means any aircraft, whether or not a Maltese-controlled aircraft, other than —

(a) a military aircraft; or

(b) an aircraft which, not being a military aircraft, belongs to or is exclusively employed in the service of the Government of Malta for customs or police purposes;

but the Minister may by order, which may be varied or revoked by a subsequent order, provide that any of the provisions of this Act

shall apply with or without modifications to aircraft such as are mentioned in paragraph (b) of this definition;

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

“The Hague Convention” means the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on the 16th day of December, 1970;

“Maltese controlled aircraft” means an aircraft —

(a) which is for the time being registered in Malta; or

(b) which is not for the time being registered in any country but in the case of which either the operator of the aircraft or each person entitled as owner to any legal or beneficial interest in it satisfies the following requirements, namely —

(i) that he is a person qualified to be the owner of a legal or beneficial interest in an aircraft registered in Malta; and

(ii) that he resides or has his principal place of business in Malta; or

(c) which, being for the time being registered in some other country, is for the time being chartered by demise or leased without crew to a person who, or to persons each of whom, satisfies the requirements aforesaid or leased whether without or with crew to an airline registered in Malta;

“Military aircraft” means an aircraft of the naval, military or air forces of any country;

“Minister” means the Minister responsible for justice;

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

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

Cap. 164 “police officer” has the same meaning assigned to it by the Malta Police Ordinance;

“the Montreal Convention” means the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on the 23rd day of September, 1971;

“the Montreal Protocol” means the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Montreal Convention, which Protocol was signed at Montreal on the 24th February, 1988;

“the Tokyo Convention” means the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on the 14th of September, 1963.

PART II

Provisions giving effect to the Tokyo Convention (1963)

3. (1) In this part, except where the context otherwise requires, the following expressions have the following meanings respectively, that is to say — Interpretation
of Part II.

“Convention country” means a country in which the Tokyo Convention is for the time being in force; and the Minister may, by order, certify that any country specified in the order is for the time being a Convention country, and any such order for the time being in force which may be varied or revoked by a subsequent order, shall be conclusive evidence that the country in question is for the time being a Convention country;

“Immigration Officer” has the same meaning assigned to it by section 2 of the Immigration Act and includes any public officer acting under such authority; Cap. 217.

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

(a) any period from the moment when power is applied for the purpose of the aircraft taking off on a flight until the moment when the landing run ends; and

(b) for the purposes of section 6 —

(i) any period from the moment when all external doors of the aircraft are closed following embarkation for a flight until the moment when any such door is opened for disembarkation after that flight; and

(ii) if the aircraft makes a forced landing, any period thereafter until the time when a competent authority takes over responsibility for the aircraft and for the persons and property on board the aircraft; and

(c) any period when the aircraft, although on the surface of the sea or land, is not within the territorial limits of any country.

(3) In this Part, any reference to a country or the territorial limits thereof includes a reference to the territorial waters, if any, of that country.

Application of
criminal law
to offences
on aircraft.

4. (1) Subject to subsection (2), any act taking place on board any Maltese controlled aircraft while in flight elsewhere than in or over Malta and which, if taking place in Malta, would constitute an offence under the law in force in Malta shall constitute that offence.

(2) Subsection (1) shall not apply to any act which is, by or under the law in force in Malta, expressly or impliedly authorised when taking place outside Malta.

Jurisdiction.
Cap. 9.

5. For the purpose of section 5 of the Criminal Code, an offence referred to in subsection (1) of section 4, shall be deemed to have been committed in Malta.

Powers of the
Aircraft
Commander.

6. (1) If the commander of an aircraft in flight has reasonable grounds to believe in respect of any person that the person in question has committed, or is about to commit, on board the aircraft any criminal offence or has done or is about to do any act which jeopardizes or may jeopardize —

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

(b) good order and discipline on board the aircraft.

then, subject to section 7, the commander may take with respect to that person such reasonable measures, including restraint of his person, as may be necessary —

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

(ii) to maintain good order and discipline on board the aircraft; or

(iii) to enable the commander to deliver that person in accordance with section 7.

(2) Where the commander of the aircraft is entitled under subsection (1) to restrain any person —

(a) any member of the crew of the aircraft or any other person on board the aircraft may —

(i) at the request or with the authority of the commander, render assistance in effecting the restraint;

(ii) without obtaining the authority of the commander, take with respect to any person on board the aircraft any measures such as are mentioned in subsection (1) which he has reasonable grounds to believe are immediately necessary to protect the safety of the aircraft or of persons or property on board the aircraft; and

(b) any member of the crew shall, if the commander so requires, render such assistance as the commander may direct.

(3) Any member of the crew of an aircraft who wilfully and without reasonable cause fails to assist the commander of the aircraft in restraining any person when so required shall be liable to a fine (*multa*) not exceeding five hundred Maltese liri.

7. (1) Where a person is under restraint on an aircraft pursuant to section 6 the commander of the aircraft shall as soon as practicable, and if possible before landing in any country, notify the authorities in that country of the fact that a person on board is under restraint and of the reasons for such restraint.

Provisions
ancillary to
powers under
section 6.

(2) Any restraint imposed on any person on board an aircraft conferred by section 6 shall not be continued after the time when the aircraft first thereafter ceases to be in flight other than —

(a) for any period (including the period of any further flight) between that time and the first occasion thereafter on which the commander is able with any requisite consent of the appropriate authorities to disembark or deliver the person under restraint in accordance with subsection (3); or

(b) if the person under restraint agrees to continue his journey under restraint on board that aircraft.

(3) The commander of an aircraft if in the case of any person on board the aircraft he has reasonable grounds —

(a) to believe as mentioned in subsection (1) of section 6; and

(b) to believe that it is necessary so to do in order to protect the safety of the aircraft or of persons or property on board the aircraft or to maintain good order and discipline on board the aircraft.

may disembark that person in any country in which that aircraft may be and, if convenient, deliver him to a person having the function of a police officer or immigration officer.

(4) The commander of an aircraft —

(a) if he disembarks any person in pursuance of subsection (3), in the case of a Maltese-controlled aircraft, in any country or, in the case of any other aircraft, in Malta, shall report the fact of, and the reasons for, that disembarkation to the authorities in the country of disembarkation and shall also request the authorities to notify a diplomatic or consular representative of the country of nationality of that person; or

(b) if he delivers any person in pursuance of subsection (3), shall at the time of delivery furnish to the appropriate officer such evidence and information relating to the need to take measures against that person pursuant to section 6, as at the time of furnishing are lawfully in his possession.

(5) Any commander of an aircraft who wilfully and without reasonable cause fails to comply with the requirement of subsection (4) shall be liable on conviction to a fine (*multa*) of five hundred Maltese liri.

Jurisdiction
of Convention
countries for
extradition
purposes.
Cap. 276.

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

Provisions as
to evidence in
connection with
aircraft.

9. (1) Where, in proceedings before any court in Malta for an offence committed on board an aircraft, the evidence of any person is required and the court is satisfied that such person cannot be found in Malta, there shall be admissible in evidence before that court any statement relating to the subject-matter of those proceedings previously made on oath by that person and which was so made —

(a) in the presence of the person charged with the offence;
and

(b) in any other Convention country to an officer having functions corresponding to the functions, in Malta, either of judge or of a magistrate or of a consular officer.

(2) Any such deposition shall be authenticated by the signature of the judge, magistrate or consular officer before whom it was made, and shall be certified by him to have been taken in the presence of the person charged as aforesaid.

(3) It shall not be necessary in any proceedings to prove the signature or official character of the person appearing to have authenticated any deposition, or to have given such a certificate as aforesaid; and such a certificate shall, unless the contrary is proved, be sufficient evidence in any proceedings that the person charged as aforesaid was present at the making of the deposition.

Exemption from
liability for acts
against offenders
under this Part.

10. The commander of an aircraft, any other member of the crew, any passenger, any owner or operator of an aircraft or any person on whose behalf a flight is made who takes action against any person in pursuance of this Part shall be exempt from liability for any measures taken against the offender in accordance with this Part whether the offender is convicted or not.

PART III

Provisions giving effect to The Hague Convention (1970)

11. In this Part, unless the context otherwise requires —

Interpretation.

“Convention country” means a country in which The Hague Convention is for the time being in force.

12. (1) Whoever on board an aircraft in flight, unlawfully, by force or threat of force or by any other form of intimidation, seizes or exercises control of that aircraft, commits the offence of hijacking of such aircraft.

Hijacking.

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

13. Whoever commits the offence of hijacking shall be punished with imprisonment for life.

Punishment for hijacking.

14. (1) Whoever, being a person committing the offence of hijacking of an aircraft, commits, in connection with such offence, any act of violence against any passenger or member of the crew of such aircraft, shall be punished with the same punishment with which he would have been punishable under any law for the time being in force in Malta if such act had been committed in Malta.

Punishment for acts of violence connected with hijacking.

(2) For the purposes of subsection (1) of this section any act of violence means any act which would constitute an offence under sections 211, 212, 214, 216, 217, 218, 220 and 222 of the Criminal Code.

15. (1) Subject to the provisions of subsection (2) where an offence under this part is committed outside Malta, the person committing such offence may be dealt with in respect thereof as if such offence had been committed in Malta.

Jurisdiction.

(2) No court shall take cognizance of an offence punishable under this Part and which is committed outside Malta unless —

(a) such offence is committed on board an aircraft registered in Malta; or

(b) such offence is committed on board an aircraft which is for the time being leased without crew to a lessee who has his principal place of business or where he has no such place of business, his permanent residence in Malta; or

(c) the alleged offender is a citizen of Malta or is on board the aircraft in relation to which such offence is committed when it lands in Malta or is found in Malta.

Provisions as
to extradition.

16. (1) The offences under this Part shall be deemed to have been included as extraditable offence and provided for all the extradition treaties made by Malta with Convention countries and which extend to, and are binding on, Malta on the date of commencement of this Act.

(2) For the purposes of the application of the Extradition Act, to offences under this Part, any aircraft registered in a Convention country shall, at any time while that aircraft is in flight, be deemed to be within the jurisdiction of that country whether or not it is for the time being also within the jurisdiction of any other country.

(3) Where the Extradition Act does not apply in the case of any State which is a party to The Hague Convention, the Minister may make an order providing for the Extradition Act to apply in the case of that State with like effect and subject to like terms and conditions as if authorised by sections 4 and 7 of the Extradition Act and, for the purposes of any such order, that Convention shall be equivalent to the designation of a Commonwealth country under the said section 4 and shall be treated as an arrangement such as is mentioned in the said section 7.

(4) Where the Extradition Act applies to any State by virtue only of an order made under subsection (3), no application for extradition by that State shall relate to any extradition crimes within the meaning of the Extradition Act except offences deemed to be included in the list of extradition crimes pursuant to subsection (1).

Contracting
Parties to
Convention.

17. The Minister may, by Order in the Gazette, certify as to which are the contracting parties to The Hague Convention and to what extent they have availed themselves of the provisions of the Convention, and any such Order shall be conclusive evidence of the matters certified therein.

PART IV

Provisions giving effect to the Montreal Convention (1971) and the Montreal Protocol (1988)

Interpretation.

18. (1) In this Part, unless the context otherwise requires, —

“airport” means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the take-off and landing of aircraft;

“Convention country” means a country in which the Montreal Convention and the Montreal Protocol are for the time being in force.

(2) For the purposes of this Part, —

(a) an aircraft shall be deemed to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation, and in the case of a forced landing, the flight shall be deemed to continue until the competent authorities of the country in which such forced landing takes place take over the responsibility for the aircraft and for persons and property on board;

(b) an aircraft shall be deemed to be in service from the beginning of the pre-flight preparation of the aircraft by the ground staff or by the crew for a specific flight until twenty-four hours after any landing and the period of such service shall include the entire period during which the aircraft is in flight.

19. (1) Whoever unlawfully and intentionally —

Offence of committing violence on board an aircraft in flight, etc.

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

(b) destroys an aircraft in service or causes damage to such aircraft in such a manner as to render it incapable of flight or which is likely to endanger its safety in flight; or

(c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or

(d) communicates such information which he knows to be false so as to endanger the safety of an aircraft in flight,

shall be liable to life imprisonment.

(2) Whoever unlawfully and intentionally using any device, substance or weapon:

(a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or

(b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located therein or disrupts the services of the airport,

if such an act endangers or is likely to endanger the safety at that airport shall be liable to life imprisonment or to such lesser punishment, being not less than imprisonment for three years, as the Court may deem fit.

(3) For the purpose of this section “act of violence” means any act which would constitute the offences under sections 211, 212, 214, 216, 217, 218, 220 and 222 of the Criminal Code; or any act whereby an explosion of a nature likely to endanger life, or to cause serious injury to property, is maliciously caused by means of any explosive substance, whether or not any injury to person or property is actually caused; “explosive substance” has the same meaning assigned to it by section 314 of the Criminal Code.

Destruction of,
or damage to,
air navigation
facilities.

20. Whoever unlawfully and intentionally destroys or damages air navigation facilities or interferes with their operation in such a manner as is likely to endanger the safety of the aircraft in flight shall be liable to imprisonment for life.

Jurisdiction.

21. (1) Subject to the provisions of subsection (2), where an offence under section 19 is committed outside Malta, the person committing such offence may be dealt with in respect thereof as if such offences had been committed in Malta.

(2) No court shall take cognizance of an offence punishable under section 19 which is committed outside Malta unless —

(a) such offence is committed on board an aircraft registered in Malta; or

(b) such offence is committed on board an aircraft which is for the time being leased without crew to a lessee who has his principal place of business, or where he has no such place of business, his permanent residence in Malta; or

(c) the alleged offender is a citizen of Malta or is on board the aircraft in relation to which such offence is committed when it lands in Malta or is found in Malta.

Provisions as
to extradition.

22. (1) The offences under this Part shall be deemed to have been included as extraditable offences and provided for in all the extradition treaties made by Malta with Convention Countries and which extend to, and are binding on, Malta on the date of commencement of this Act.

(2) For the purposes of the application of the Extradition Act, to offences under this Act, any aircraft registered in a Convention country shall, at any time while that aircraft is in flight, be deemed to be within the jurisdiction of that country, whether or not it is for the time being also within the jurisdiction of any other country.

(3) Where the Extradition Act, does not apply in the case of any foreign State which is a party to the Montreal Convention, or to the Montreal Protocol, the Minister may make an order providing for the Extradition Act to apply in the case of that State with like effect and

subject to like terms and conditions as authorised by sections 4 and 7 of the Extradition Act and, for the purposes of any such order, that Convention and that Protocol shall be equivalent to the designation of a Commonwealth country under the said section 4 and shall be treated as an arrangement such as is mentioned in the said section 7.

(4) Where the Extradition Act applies to any State by virtue only of an order made under subsection (3), no application for extradition by that State shall relate to any extradition crimes within the meaning of the Extradition Act except offences deemed to be included in the list of extradition crimes pursuant to subsection (1).

23. The Minister may, by Order in the Gazette, certify as to who are the contracting parties to the Montreal Convention and the Montreal Protocol and to what extent they have availed themselves of the provisions of the Convention, and any such Order shall be conclusive evidence of the matters certified therein.

Contracting
Parties to
convention.

GENERAL

24. If the Minister by order declares —

(a) that any two or more States named in the order have established an organization or agency which operates aircraft; and

Aircraft
operated by
joint or
international
organization.

(b) that one of those States has been designated to exercise the powers of the State of registration, or to be considered as the State thereof, in relation to all or any aircraft so operated,

then, for the purposes of such provisions of this Act as the order may prescribe, the State so designated or considered under paragraph (b) shall be deemed to be the State in which all aircraft so operated, or (as the case may be) any such aircraft specified in the order, are registered.

25. The Minister may make regulations for the purpose of giving effect to this Act and, without prejudice to the generality of the foregoing, may provide for —

Regulations.

(a) the procedure in assisting an offender to communicate with a representative of the State of which he is a national;

(b) the notification to any foreign State of any matter to be notified under this Act;

(c) the restoration and preservation of control of an aircraft to the commander of the aircraft;

(d) the return of an aircraft and its cargo, after such aircraft and cargo have been unlawfully seized, to any person lawfully entitled to possession;

(e) assisting passengers and crew to continue their journey after the unlawful seizure of an aircraft; and

(f) the holding of any investigation into unlawful or dangerous acts on board an aircraft.

Protection of
action taken
in good faith.

26. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which, in good faith, is done or intended to be done in pursuance of the provisions of this Act.

(2) No suit or other legal proceeding shall lie against the Government of Malta for any damage caused or likely to be caused for anything which, in good faith, is done or intended to be done in pursuance of the provisions of this Act.

Authorisation for
the Ratification
of these
Conventions.

27. In virtue of this Act, the Government of Malta is authorised to ratify the Tokyo Convention, The Hague Convention, the Montreal Convention and the Montreal Protocol.

Passed by the House of Representatives at Sitting No. 555 of the 30th July, 1991.

LAWRENCE GONZI
Speaker

RICHARD J. CAUCHI
Acting Clerk to the House of Representatives.