

## 1985 No. 751

## FUGITIVE CRIMINAL

## The Extradition (Taking of Hostages) Order 1985

<i>Made</i> - - - - -	15th May 1985
<i>Laid before Parliament</i>	23rd May 1985
<i>Coming into Operation</i>	31st May 1985

At the Court at Buckingham Palace, the 15th day of May 1985

Present,

The Queen's Most Excellent Majesty in Council

Whereas the International Convention against the Taking of Hostages (hereinafter referred to as the "the Convention") opened for signature at New York on 18th December 1979, the terms of which are set out in Schedule 1 to this Order, entered into force for the United Kingdom on 3rd June 1983:

And whereas the States mentioned in Schedule 2 to this Order are foreign States in respect of which the Convention is for the time being in force and with which extradition arrangements are in force:

And whereas the States mentioned in Part I of Schedule 3 to this Order are foreign States in respect of which the Convention is for the time being in force but with which no extradition arrangements are in force:

And whereas section 3(3) of the Taking of Hostages Act 1982(a) provides that where no such arrangement as is mentioned in section 2 of the Extradition Act 1870(b) has been made with a State which is a party to the Convention, an Order in Council applying that Act may be made under that section as if the Convention were such an arrangement with that State:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by sections 2 and 17 of the Extradition Act 1870 and sections 3(3) and 5(1) of the Taking of Hostages Act 1982, or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Extradition (Taking of Hostages) Order 1985 and shall come into operation on 31st May 1985.

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(a) 1982 c.28.

(b) 1870 c.52.

2. In this Order any references to the Extradition Acts and to the Act of 1870 are, respectively, references to the Extradition Acts 1870 to 1895(a), and to the Extradition Act 1870.

3. The Extradition Acts shall apply in the case of a State mentioned in Schedule 2 to this Order under and in accordance with the extradition treaties described in the second column of that Schedule as supplemented by Article 9 and paragraphs 1 and 4 of Article 10 of the Convention (set out in Schedule 1 to this Order) which entered into force for those States on the dates specified in the third column of the said Schedule 2.

4. The Extradition Acts shall apply in the case of the States mentioned in Part I of Schedule 3 to this Order (being States in respect of which the Convention entered into force on the dates specified in the second column of that Schedule) subject to the conditions contained in, and in accordance with, Part II of that Schedule.

5. The operation of this Order is limited to the United Kingdom, the Channel Islands, the Isle of Man and the territories specified in Schedule 4 to this Order.

*G.I. de Deney,*  
Clerk of the Privy Council.

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(a) 1870 c.52, 1873 c.60, 1895 c.33.

## SCHEDULE 1

## THE CONVENTION

**INTERNATIONAL CONVENTION  
AGAINST THE TAKING OF HOSTAGES**

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,

Recognizing 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 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 organization, 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 organizations that encourage, instigate, organize or engage in the perpetration of acts of taking 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 organization 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 organization 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 in 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 organizations concerned.

#### ARTICLE 8

1. 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 connexion 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 person's 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 recognize 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 connexion 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 I 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 organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

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 31 December 1980 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 authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on 18 December 1979.

## SCHEDULE 2

## Article 3

FOREIGN STATES WHICH ARE PARTIES TO THE CONVENTION AND WITH WHICH  
EXTRADITION TREATIES ARE IN FORCE

State	Date of Extradition Treaty	Date of Entry into Force of Convention
Chile	26th January 1897	3rd June 1983
El Salvador	23rd June 1881	3rd June 1983
Finland	29th October 1975	3rd June 1983
Germany, Federal Republic of	14th May 1872 (reapplied and amended by the Agreement of 23rd February 1960)	3rd June 1983
Guatemala	4th July 1885	3rd June 1983
Iceland	31st March 1873	3rd June 1983
Norway	26th June 1873	3rd June 1983
Panama	25th August 1906	3rd June 1983
Portugal	17th October 1892	5th August 1984
Sweden	26th April 1963	3rd June 1983
Switzerland	26th November 1880	4th April 1985
United States of America	8th June 1972	6th January 1985

## SCHEDULE 3

## Article 4

## PART I

FOREIGN STATES WHICH ARE PARTIES TO THE CONVENTION AND WITH WHICH NO  
EXTRADITION TREATIES ARE IN FORCE

State	Date of Entry into Force of Convention
Bhutan	3rd June 1983
Egypt	3rd June 1983
Honduras	3rd June 1983
Korea, Republic of	3rd June 1983
Philippines	3rd June 1983
Spain	25th April 1984
Suriname	3rd June 1983

## PART II

APPLICATION OF THE EXTRADITION ACTS IN THE CASE OF THE STATES  
MENTIONED IN PART I

1. The Extradition Acts shall hereby have effect as if the only extradition crimes within the meaning of the Act of 1870 were offences under section 1 of the Taking of Hostages Act 1982 and attempts to commit such offences.

2. The Extradition Acts shall hereby only apply where the case is such that paragraphs 2 and 4 of Article 10 of the Convention apply.

3. No proceedings shall be taken on an application by information or complaint, for a provisional warrant of arrest (that is to say, a warrant issued under section 8 of the Act of 1870 otherwise than in pursuance of subparagraph 1 of the first paragraph thereof), and no such warrant shall be issued, unless the application is made with the consent of the Secretary of State signified by an order in the form set out in Part III of this Schedule or in a form to the like effect; but, subject as aforesaid, the signification of consent shall not affect the provisions of the said section 8.

4. Without prejudice to sections 3, 9 and 11 of the Act of 1870, the fugitive criminal shall not be surrendered if—

- (a) it appears to the Secretary of State, to the magistrate hearing the case in pursuance of section 9 of that Act or to the High Court on an application for a writ of habeas corpus—
- (i) that the request for his surrender (though purporting to be made on account of such an offence as is mentioned in paragraph 1 above) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality, ethnic origin or political opinions, or
  - (ii) that he might, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, ethnic origin or political opinions, or
  - (iii) that if charged in England or Wales with the offence of which he is accused he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction; or
- (b) it appears to the Secretary of State or to the High Court on an application for a writ of habeas corpus that—
- (i) by reason of the passage of time since the fugitive criminal is alleged to have committed the offence of which he is accused or to have become unlawfully at large, or
  - (ii) because the accusation against him is not made in good faith in the interests of justice, it would, having regard to all the circumstances, be unjust or oppressive to surrender him.

5.— (1) Without prejudice to his so deciding on other grounds, the Secretary of State may, in the circumstances mentioned in the following sub-paragraph, decide not to make an order or issue a warrant—

- (a) for the purposes of paragraph 3 above signifying his consent to an application for a provisional warrant of arrest, or
- (b) under section 7 of the Act of 1870 requiring the issue of a warrant of arrest, or
- (c) under section 11 of the Act of 1870 ordering the fugitive criminal to be surrendered.

(2) The circumstances referred to in the preceding sub-paragraph are—

- (a) that the Secretary of State is not satisfied that provision is made by the law of the State requesting surrender under which a person accused or convicted in the United Kingdom of the like offence as that with which the fugitive criminal is accused or convicted might be surrendered to the United Kingdom if found in that State, or
- (b) that under the law of the State requesting surrender the fugitive criminal is liable to the death penalty for the offence of which he is accused, or
- (c) that the fugitive criminal is a British citizen, a British Dependent Territories citizen, a British Overseas citizen, a British subject, or a British protected person.

### PART III

#### FORM OF CONSENT OF SECRETARY OF STATE TO APPLICATION FOR A PROVISIONAL WARRANT OF ARREST

Whereas AB, a person recognised by the Secretary of State as a diplomatic representative of , has requested consent to application being made for the issue of a provisional warrant for the arrest of CD, late of , who is [accused] [convicted] of the commission of an offence, or attempt to commit an offence, within the jurisdiction of the said State, being an offence which if committed in England, would be an offence under the Taking of Hostages Act 1982:

Now I hereby, by this my Order under my hand and seal, signify to you my consent to the said application being made.

Given under the hand and seal of the undersigned, one of Her Majesty's Principal Secretaries of State this            day of            19   .

Article 5

## SCHEDULE 4

## TERRITORIES TO WHICH THIS ORDER EXTENDS

Bermuda  
British Indian Ocean Territory  
Cayman Islands  
Falkland Islands  
Falkland Islands Dependencies  
Gibraltar  
Hong Kong  
Montserrat  
Pitcairn, Henderson, Ducie and Oeno Islands  
St Helena  
St Helena Dependencies  
Sovereign Base Areas of Akrotiri and Dhekelia  
Turks and Caicos Islands  
Virgin Islands

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## EXPLANATORY NOTE

*(This Note is not part of the Order.)*

This Order applies the Extradition Acts 1870 to 1895 so as to make extraditable the offences described in the Taking of Hostages Act 1982 and attempts to commit such offences, in the case of States Parties to the International Convention against the Taking of Hostages, opened for signature at New York on 18th December 1979.

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