

CHAPTER 449

THE TOKYO CONVENTION ACT

ARRANGEMENT OF SECTIONS

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CHAPTER 449

TOKYO CONVENTION

Act No.
18 of 1971
13 of 1994

An Act to make provision with a view to ratification on behalf of the Republic of Zambia of the Convention on offences and certain other acts committed on board aircraft signed in Tokyo on the 14th September, 1963; and to provide for purposes connected with the matters aforesaid.

[16th April, 1971]

1. This Act may be cited as the Tokyo Convention Act. Short title

2. (1) In this Act, unless the context otherwise requires- Interpretation
"aircraft" means any aircraft, whether or not Zambian-controlled aircraft, other than a military aircraft;
"commander", in relation to an aircraft, means the member of the crew designated as commander of the aircraft by the operator thereof, or, failing such person, the person who is for the time being the pilot in command of the aircraft;

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

"military aircraft" includes any naval, military and air force aircraft, and any aircraft commanded by a person in naval, military or air force service detailed for the purpose of commanding such aircraft;

"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;

"Tokyo Convention" means the convention on offences and certain other acts committed on board aircraft signed in Tokyo on the 14th September, 1963;

"Zambian-controlled aircraft" means an aircraft-

- (a) which is for the time being registered in Zambia;
- (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 Zambia; and
 - (ii) that he resides or has his principal place of business in Zambia; or
- (c) which, being for the time being registered in some other country, is for the time being chartered by demise to a person who or to persons each of whom satisfies the requirements aforesaid.

(2) For the purposes of this Act, 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, if any, at the termination of the flight ends; and

(b) for the purposes of section *three-*

(i) any further period from the moment when all external doors, if any, 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 competent authorities of the country, in which the forced landing takes place, take over the responsibility for the aircraft and for the persons and property on board the aircraft (being, if the forced landing takes place in Zambia, the time when a police officer arrives at the place of landing);

and any reference in this Act to an aircraft in flight shall include a reference to an aircraft during any period when it is on or over the surface of the sea or land but not within the territorial limits of any country.

(3) In this Act, except where the context otherwise requires, any reference to a country or the territorial limits thereof shall be construed as including a reference to the territorial waters, if any, of that country.

(4) If the Minister is satisfied that the requirements of Article 18 of the Tokyo Convention have been satisfied (which Article makes provision as to the country which is to be treated as the country of registration of certain aircraft operated by joint air transport organisations or international operating agencies established by two or more convention countries) the Minister may, by statutory instrument, provide that for the purposes of this Act such aircraft as may be specified in such instrument shall be treated as registered in such convention country as may be so specified; and any such statutory instrument may be varied or revoked by a subsequent statutory instrument under this subsection.

3. Any act or omission taking place on board a Zambian-controlled aircraft while in flight elsewhere than in or over Zambia which, if taking place in Zambia, would constitute an offence under the law in force in Zambia, shall constitute that offence:

Application of
criminal law to
aircraft

Provided that this subsection shall not apply to any act or omission which is expressly or impliedly authorised by or under that law when taking place outside Zambia.

(2) No proceedings for any offences under the law in force in Zambia Cap. 444

committed on board an aircraft while in flight elsewhere than in or over Zambia (other than an offence under the Aviation Act or any regulations made thereunder) shall be instituted in Zambia except by or with the consent of the Director of Public Prosecutions. The provisions of this subsection shall not, however, prevent the arrest, or the issue of a warrant for the arrest, of any person in respect of any offence or the remand in custody or on bail of any person charged with any offence.

(3) For the purpose of conferring jurisdiction and notwithstanding anything contained to the contrary in any other law, any offence under the law in force in Zambia committed on board an aircraft in flight shall be deemed to have been committed in any place in Zambia where the offender may be for the time being.

4. (1) 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 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.

Provisions as to
Extradition Act.
Cap. 94

(2) The provisions of the Extradition Act shall (so far as applicable) apply, *mutatis mutandis*, to any offence committed under this Act.

Cap. 94

5. (1) The provisions of subsections (2) to (5) inclusive shall have effect for the purposes of any proceedings before any court in Zambia.

Powers of
commander of
aircraft

(2) If the commander of an aircraft in flight, wherever that aircraft may be, has reasonable grounds to believe, in respect of any person on board the aircraft-

(a) that the person in question has done or is about to do any act on the aircraft while it is in flight which jeopardises or may jeopardise-

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

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

(b) that the person in question has done on the aircraft while in flight any act which, in the opinion of the commander, is a serious offence under any law in force in the country in which the aircraft is

registered, not being a law of a political nature or based on racial or religious discrimination;

then, subject to subsection (4), the commander may take with respect to that person such reasonable measures, including restraint of his person, as may be necessary-

A. to protect the safety of the aircraft or of persons or property on board the aircraft; or

B. to maintain good order and discipline on board the aircraft; or

C. to enable the commander to disembark or deliver the person in accordance with subsection (5);

and, for the purposes of paragraph (b), any *Zambian-controlled* aircraft shall be deemed to be registered in Zambia whether or not it is, in fact, so registered and whether or not it is, in fact, registered in some other country.

(3) Any member of the crew of an aircraft may, at the request or with the authority of the commander of the aircraft, and any such member shall, if so required by that commander, render assistance in restraining any person whom the commander is entitled under subsection (2) to restrain; and at any time when the aircraft is in flight any such member or other person may, without obtaining the authority of the commander, take with respect to any person on board the aircraft any measures such as are mentioned in the said subsection (2) 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.

(4) Any restraint imposed on any person on board an aircraft under the power conferred by the foregoing provisions of this section shall not be continued after the time when the aircraft first thereafter ceases to be in flight unless, before or as soon as is reasonably practicable after that time, the commander of the aircraft causes notification of the fact that a person on board the aircraft is under restraint and of the reasons therefor to be sent to an appropriate authority of the country in which the aircraft so ceases to be in flight, but, subject to such notification, may be continued after that time-

(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 (5); or

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

(5) The commander of an aircraft-

(a) if, in the case of any person on board the aircraft, he has reasonable grounds-

- (i) to believe as mentioned in paragraph (a) of subsection (2); and
- (ii) 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

(b) if, in the case of any person on board the aircraft, he has reasonable grounds to believe as mentioned in paragraph (b) of subsection (2), may deliver that person-

- (i) in Zambia, to a police officer or immigration officer; or
- (ii) in any other country which is a convention country, to an officer having functions corresponding to the functions in Zambia either of a police officer or of an immigration officer.

(6) The commander of an aircraft-

(a) if he disembarks any person in pursuance of paragraph (a) of subsection (5), in the case of a Zambian-controlled aircraft, in any country or, in the case of any other aircraft, in Zambia, shall report the fact of, and the reasons for, that disembarkation to-

- (i) an appropriate authority in the country of disembarkation; and
- (ii) the appropriate diplomatic or consular officer of the country of nationality of that person;

(b) if he intends to deliver any person in accordance with paragraph (b) of subsection (5) in Zambia or, in the case of a Zambian-controlled aircraft, in any other country which is a convention country, shall, before or as soon as reasonably practicable after landing, give

notification of his intention and of his reasons therefor-

(i) where the country in question is Zambia, to a police officer or immigration officer, or, in the case of any other country, to an officer having functions corresponding to the functions in Zambia either of a police officer or of an immigration officer;

(ii) in either case, to the appropriate diplomatic or consular officer of the country of nationality of that person;

and any commander of an aircraft who, without reasonable cause, fails to comply with the requirements of this subsection shall be liable on conviction to a fine not exceeding three thousand penalty units

(As amended by Act No. 13 of 1994)

6. (1) Where, in any proceedings before a court in Zambia for an offence committed on board an aircraft, the testimony of any person is required and the court is satisfied that the person in question cannot be found in Zambia, there shall be admissible in evidence before that court any deposition relating to the subject-matter of those proceedings previously made on oath by that person outside Zambia which was so made-

Provisions as to evidence in connection with aircraft

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

(b) before a judge or magistrate of the country before whom such deposition was made, or before a consular officer of the Republic of Zambia.

(2) Any such deposition shall be authenticated by the signature of the judge, magistrate or consular officer before whom it was made, who shall certify that the person charged with the offence was present at the taking of the deposition.

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

(4) If a complaint is made to such a consular officer as aforesaid that any offence has been committed on a Zambian-controlled aircraft while

in flight elsewhere than in or over Zambia, that officer may inquire into the case upon oath.

(5) In this section-

(a) the expression "deposition" includes any affidavit, affirmation or statement made upon oath; and

(b) the expression "oath" includes an affirmation or declaration in the case of persons allowed by law to affirm or declare instead of swearing;

and nothing in this section shall prejudice the admission as evidence of any deposition which is admissible in evidence apart from this section.