

No. 4 of 1993. *The Taking of Hostages Act, 1993.*

ANTIGUA
AND
BARBUDA

[L.S.]

I Assent,

Wilfred Jacobs,
Governor-General.

17th February, 1993.

ANTIGUA AND BARBUDA

No. 4 of 1993.

AN ACT to implement the International Convention against the taking of hostages, and for connected purposes.

[18th February, 1993.]

ENACTED by the Parliament of Antigua and Barbuda as follows—

1. This Act may be cited as the Taking of Hostages Act, 1993.

Short title.

2. In this Act—

Interpretation.

"The Convention" means the International Convention against the Taking of Hostages opened for signature at New York on 18th December, 1979.

3. (1) Subject to subsection (2) a person commits the offence of hostage-taking who, whether in or outside Antigua and Barbuda unlawfully seizes or detains any person (in this section referred to as "the hostage") without his consent, or with his consent obtained by fraud or duress, with intent to compel the government of any country or any international inter-governmental organization or any other person to do or abstain from doing any act as a condition, whether express or implied, for the release of the hostage.

Hostage-taking.

(2) No person shall be convicted of the offence of hostage-taking if —

(a) the act of hostage-taking takes place in Antigua and Barbuda; and

(b) the alleged offender is in Antigua and Barbuda; and

(c) the alleged offender and the hostage are citizens of Antigua and Barbuda.

(3) A person who commits the offence of hostage-taking is liable on conviction on indictment to imprisonment for fifteen years.

Offences involving threats.

4. (1) A person, whatever his nationality who, in Antigua and Barbuda or elsewhere—

(a) detains any other person ("the hostage"); and

(b) in order to compel a State, international inter-governmental organisation or person to do or abstain from doing any act, threatens to kill, injure or continue to detain the hostage;

commits an offence.

(2) A person guilty of an offence under this Act is liable, on conviction on indictment, to imprisonment for life.

Prosecution of offences.

5. (1) Subject to subsection (2), no proceedings for the trial and punishment of any person charged with an offence mentioned in section 3 shall be instituted in any court except with the consent of the Director of Public Prosecutions.

(2) A person charged with an offence referred to in subsection (1) may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Director of Public Prosecution to the institution of a prosecution for the offence has not been obtained, but no further proceedings shall be taken until that consent has been obtained.

Evidence.

6. For any purpose in connection with this Act, a certificate given by the Minister charged with the responsibility for External Affairs certifying—

(a) that any State is or is not, or was or was not at my material time, a party to the Convention; or

(b) that the government of any State is or is not, or was or was not at any material time, responsible for the international relations of any territory;

shall be sufficient evidence of that fact.

7. For the purposes of the Extradition Act 1993 no offence to which section 3 applies shall be regarded as an offence of a political character and no proceedings in respect of such an offence shall be regarded as a criminal matter of a political character or as criminal proceedings of a political character.

Hostage-taking not to be regarded as of a political character.

8. This Act is remedial and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of the purposes of the Convention the text of which is contained in the Schedule.

Purposes and construction.

9. The Minister may by notice published in *Gazette* determine the date on which this Act comes into force.

commencement.

SCHEDULE

The Convention

INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES

The State Parties to the 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 relation and co-operation among States;

Recognising 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 Convention of 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.

Having 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 inter-governmental organisation, 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. (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

State 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 **organisations** that encourage, instigate, organise or engage in the perpetration of acts of taking hostages;
- (b) exchange 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;
- (h) by any of its national 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 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 State mentioned in paragraph 1 of this article.

3. The 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 judicial 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 organisation 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 made the preliminary inquiry contemplated in paragraph 1 of this article shall promptly report its findings to the States or organisation referred to in paragraph 2 of findings to the State or organisation 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 organisations 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 obligated, committed in its territory, to submit the case to its competent authorities in accordance with the laws of that State. Those authorities shall take this 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 connection 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 sub-paragraph (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 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 recognise the offences set forth in Article 1 as extraditable offences between themselves 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 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 connection 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 Convention 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 State Parties to this Convention are bound under those conventions 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 1 of 1977, in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to 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 of 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

4

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 organisation 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

ANTIGUA 10 *The Taking of Hostages Act, 1993.* No. 4 of 1993.
AND
BARBUDA

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

No. 4 of 1993.

The Taking of Hostages Act, 1993.

11

ANTIGUA
AND
BARBUDA

Passed the House of Representatives
this 21st day of January, 1993.

Passed the Senate this 11th
day of February, 1993.

C. L. Murray,
Speaker.

B. T. Carrott,
President.

L. A. Dowe,
Clerk to the House of Representatives.

L. A. Dowe,
Clerk to the Senate.

Printed at the Government Printing Office, Antigua and Barbuda,
by James Adolphus McKenzie Sebastian, Government Printer,
—By Authority, 1993.

800—2.93

[Price \$4.701