

No. S 41

CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))

EMERGENCY (HIJACKING AND PROTECTION OF AIRCRAFT)
ORDER, 2000

In exercise of the power conferred by subsection (3) of section 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

Citation and long title.

1. (1) This Order may be cited as the Emergency (Hijacking and Protection of Aircraft) Order, 2000.

(2) The long title of this Order is "An Order to give effect to the Convention for the Suppression of Unlawful Seizure of Aircraft signed at The Hague on 16th. December, 1970 and to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23rd. September, 1971, and for the purposes connected therewith".

Interpretation.

2. (1) In this Order, unless the context otherwise requires —

"act of violence" means —

(a) any act done in Brunei Darussalam which constitutes the offence of murder, attempted murder, culpable homicide, voluntarily causing grievous hurt or voluntarily causing hurt by dangerous weapons or means; and

(b) any act done outside Brunei Darussalam which, if done in Brunei Darussalam, would constitute an offence mentioned in paragraph (a);

"landing" includes alighting on water;

"military service" includes naval and air force service;

"unlawfully", in relation to the commission of an act —

(a) in Brunei Darussalam, means an offence that is (apart from this Order) constituted under any law in force in Brunei Darussalam; and

(b) outside Brunei Darussalam, means the commission of the act that would (apart from this Order) have been an offence under any law in force in Brunei Darussalam had it been committed in Brunei Darussalam.

(2) For the purposes of this Order —

(a) the period during which an aircraft is in flight shall be deemed to include any period from the moment when all its external doors, if any, are closed following embarkation for a flight until the moment when any such door is opened for disembarkation after that flight and, in the case of a forced landing, any period thereafter until the time when a competent authority of the country in which the forced landing is made takes over responsibility for the aircraft and for the persons and property on board the aircraft; and

(b) an aircraft shall be taken to be in service during the whole of the period which begins with the pre-flight preparation of the aircraft for a flight and ends 24 hours after the aircraft lands having completed that flight, and also at any time (not falling within that period) while, in accordance with paragraph *(a)*, the aircraft is in flight.

Hijacking.

3. (1) Subject to subsection (2), a person on board an aircraft in flight who unlawfully, by the use of force or by threats of any kind, seizes the aircraft or exercises control of it commits the offence of hijacking, whatever his nationality, whatever the state in which the aircraft is registered and whether the aircraft is in Brunei Darussalam or elsewhere.

(2) If the aircraft is used in military, customs or police service, subsection (1) shall not apply unless —

(a) the person seizing or exercising control of the aircraft is a citizen of Brunei Darussalam;

(b) his act is committed in or over Brunei Darussalam; or

(c) the aircraft is used in the military, customs or police service of Brunei Darussalam.

(3) A person who commits the offence of hijacking is guilty of an offence.

Violence against passengers or crew.

4. Any act of violence against any passenger or member of the crew of any aircraft in flight done by any person in connection with the offence of hijacking committed or attempted by him on board the aircraft shall be deemed to have been committed in Brunei Darussalam and shall constitute an offence punishable under the law in force in Brunei Darussalam applicable thereto, wherever the act of violence was committed, whatever the nationality of the offender and whatever the state in which the aircraft is registered.

Destroying, damaging or endangering safety of aircraft.

5. (1) Subject to subsection (4), any person who unlawfully and intentionally —

- (a) destroys an aircraft in service or so damages the aircraft as to render it incapable of flight or as to be likely to endanger its safety in flight; or
- (b) commits on board an aircraft in flight any act of violence which is likely to endanger the safety of the aircraft,

is guilty of an offence.

(2) Subject to subsection (4), any person who unlawfully and intentionally places or causes to be placed on an aircraft in service any device or substance which is likely to destroy the aircraft or is likely so to damage it as to render it incapable of flight or as to be likely to endanger its safety in flight is guilty of an offence; but nothing in this subsection shall be construed as limiting the circumstances in which the commission of any act —

- (a) may constitute an offence under subsection (1); or
- (b) may constitute attempting or conspiring to commit or abetting the commission of the offence.

(3) Except as provided by subsection (4), subsections (1) and (2) shall apply whether any such act therein mentioned is committed in Brunei Darussalam or elsewhere, whatever the nationality of the person committing the act and whatever the state in which the aircraft is registered.

(4) Subsections (1) and (2) shall not apply to any act committed in relation to an aircraft used in military, customs or police service unless —

- (a) the act is committed in or over Brunei Darussalam; or
- (b) where the act is committed outside Brunei Darussalam, the person committing the act is a citizen of Brunei Darussalam.

Other acts endangering or likely to endanger safety of aircraft.

6. (1) Subject to subsections (5) and (6), any person who unlawfully and intentionally destroys or damages any property to which this section applies or interferes with the operation of that property, where the destruction, damage or interference is likely to endanger the safety of aircraft in flight, is guilty of an offence.

(2) Subsection (1) shall apply to any property used for the provision of air navigation facilities, including any land, building or ship so used, and any apparatus or equipment so used, whether it is on board an aircraft or elsewhere.

(3) Subject to subsections (4) and (5), any person who intentionally communicates any information which is false, misleading or deception in a material particular, where the communication of the information endangers the safety of an aircraft in flight or is likely to endanger the safety of an aircraft in flight, is guilty of an offence.

(4) It shall be a defence for a person charged with an offence under subsection (3) to prove —

- (a) that he believed, and had reasonable grounds for believing, that the information was true; or
- (b) that, when he communicated the information, he was lawfully employed to perform duties which consisted of or included the communication of information and that he communicated the information in good faith in the performance of those duties.

(5) Subsections (1) and (3) shall not apply to the commission of any act unless either the act is committed in Brunei Darussalam or, where the act is committed outside Brunei Darussalam —

- (a) the person committing the act is a citizen of Brunei Darussalam;
- (b) the commission of the act endangers or is likely to endanger the safety in flight of a civil aircraft registered in Brunei Darussalam or chartered by demise to a person who, or to persons each of whom, resides or has his principal place of business in Brunei Darussalam;
- (c) the act is committed on board a civil aircraft which is so registered or so chartered; or
- (d) the act is committed on board a civil aircraft which lands in Brunei Darussalam with the person who committed the act still on board.

(6) Subsection (1) shall not apply to any act committed outside Brunei Darussalam and so committed in relation to property which is situated outside

Brunei Darussalam and not used for the provision of air navigation facilities in connection with international air navigation, unless the person committing the act is a citizen of Brunei Darussalam.

(7) In this section, "civil aircraft" means any aircraft other than an aircraft used in military, customs or police service.

Abetting the commission of acts outside Brunei Darussalam.

7. Any person in Brunei who abets the commission elsewhere of any act which —

- (a) would, but for subsection (2) of section 3, be the offence of hijacking;
- (b) would, but for subsection (4) of section 5, be an offence under that section; or
- (c) would, but for subsections (5) or (6) of section 6, be an offence under that section,

is guilty of an offence.

Penalty.

8. Any person guilty of an offence under this Order shall be liable on conviction to be punished with imprisonment for life.

Consent for prosecution.

9. (1) No prosecution shall be instituted under this Order without the written consent of the Public Prosecutor.

(2) Notwithstanding that consent has not been given in relation to the offence in accordance with subsection (1) —

- (a) a person may be arrested for an offence under this Order;
- (b) a warrant for the arrest of any person in respect of any offence under this Order may be issued and executed;
- (c) a person may be charged with an offence under this Order; and
- (d) a person charged with any offence under this Order may be remanded in custody or granted bail,

but no further steps in the proceedings in relation to the offence shall be taken until the Public Prosecutor's consent has been obtained.

Extradition.

10. (1) Offences under this Order and attempts to commit such offences shall be deemed to be included in the list of extradition crimes described in the First Schedule to the Extradition Act (Chapter 8).

(2) Where no extradition treaty is in force between Brunei Darussalam and a state which is a party to the Convention, a notification in the *Gazette* under section 4 of the Extradition Act may be made applying that Act as if the Convention were an extradition treaty between Brunei Darussalam and that state; but where the Extradition Act is so applied, it shall have effect as if the only extradition crimes within the meaning of that Act were offences under this Order and attempts to commit such offences.

(3) For the purposes of the Extradition Act, any act, wherever committed, which —

(a) is an offence under this Order or an attempt to commit such an offence, or would be such an offence or attempt but for subsection (2) of section 3, subsection (4) of section 5 and subsections (5) and (6) of section 6; and

(b) is an offence against the law of any state in the case of which the Extradition Act has been applied by a notification in the *Gazette* made under section 4 of that Act,

shall be deemed to be an offence within the jurisdiction of that state.

(4) In this section, "the Convention" means the Convention for the Suppression of Unlawful Seizure of Aircraft signed at The Hague on 16th. December, 1970 or (as the case may be) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23rd. September, 1971.

Amendment of Chapter 113.

11. The Schedule to the Air Navigation Act is amended by deleting the following —

"S1 1971 No. 1739	The Hijacking Act 1971 (Overseas Territories) Order, 1971.	The whole	— .".
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BRUNEI DARUSSALAM GOVERNMENT GAZETTE

Made this 20th. day of Safar, 1421 Hijriah corresponding to the 24th. day of May, 2000 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

**HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM**