

No. S 42

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

EMERGENCY (TOKYO CONVENTION) 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 (Tokyo Convention) Order, 2000.

(2) The long title of this Order is "An Order to give effect to the Convention on Offences and certain other Acts Committed on board Aircraft, signed at Tokyo on 14th. September, 1963".

Interpretation.

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

"aircraft" means any aircraft, whether or not a Brunei-controlled aircraft, other than —

- (a) a military aircraft; or
- (b) an aircraft which, not being a military aircraft, is exclusively employed in the service of the Government;

"Brunei-controlled aircraft" means an aircraft —

- (a) which is registered in Brunei Darussalam; or
- (b) which, being registered in some other country, has been chartered by demise to a person who, or to persons each of whom, satisfies the following requirements —
 - (i) that he is a person qualified to be the owner of a legal or beneficial interest in an aircraft registered in Brunei Darussalam; and
 - (ii) that he resides or has his principal place of business in Brunei Darussalam;

"commander", in relation to an aircraft, means the member of the crew designated as commander of that aircraft by the person who at that time had the management thereof or, failing such a person, the person who is for the time being in charge of the piloting of the aircraft without being under the direction of any other pilot in the aircraft;

"consular officer" means a consular officer, consul-general, consul, pro-consul or consular agent of Brunei Darussalam;

"Convention country" means a country which has for the time being been declared by the Minister, by notification published in the *Gazette*, to have ratified or acceded to the Tokyo Convention;

"immigration officer" means a person appointed under section 3 of the Immigration Act (Chapter 17);

"landing" includes alighting on water;

"military aircraft" means an aircraft of the naval, military or air forces of any country;

"Tokyo Convention" means the Convention on Offences and certain other Acts Committed on board Aircraft, signed at Tokyo on 14th. September, 1963.

(2) For the purposes of this Order, 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 that flight ends; and
- (b) for the purpose of section 5 —
 - (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 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 (being, if the forced landing is made in Brunei Darussalam, the time when a police officer arrives at the place of landing),

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

(3) In this Order, unless 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 aircraft operated by joint air transport operating organisations or international operating agencies established by two or more Convention countries) he may, by notification published in the *Gazette*, provide that for the purposes of this Order such aircraft as may be specified in the notification shall be treated as registered in such Convention country as may be so specified.

Application of criminal law to aircraft.

3. (1) Any act or omission taking place on board a Brunei-controlled aircraft while in flight elsewhere than in or over Brunei Darussalam which, if it took place in Brunei Darussalam, would constitute an offence under the law in force in Brunei Darussalam, shall constitute that offence:

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 Brunei Darussalam.

(2) No prosecution for any offence under the law in force in Brunei Darussalam committed on board an aircraft while in flight elsewhere than in or over Brunei Darussalam, other than an offence under the Air Navigation Act (Chapter 113) or any subsidiary legislation made thereunder, shall be instituted in Brunei Darussalam without the written consent of the Public Prosecutor.

(3) Subsection (2) shall not prevent the arrest or the issue of a warrant for the arrest, of any person in respect of any offence, or the remanding in custody or on bail of any person charged with any offence.

(4) For the purpose of conferring jurisdiction, any offence under the law in force in Brunei Darussalam committed on board an aircraft in flight shall be deemed to have been committed in Brunei Darussalam.

Provisions as to extradition.

4. For the purposes of the application of the Extradition Act (Chapter 8) 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.

Powers of commander of aircraft.

5. (1) Subsections (2), (3), (4) and (5) shall have effect for the purposes of any proceeding before any court in Brunei Darussalam.

(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 such person 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 such person 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 —

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

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

(iii) to enable the commander to disembark or deliver that person in accordance with subsection (5),

and for the purposes of paragraph (b), any Brunei-controlled aircraft shall be deemed to be registered in Brunei Darussalam.

(3) Any member of the crew of an aircraft and any other person on board the aircraft may, at the request or with the authority of the commander of the aircraft, and any such member or other person 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 the authority of the

commander, take with respect to any person on board the aircraft any measure mentioned in 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 powers conferred by 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 a competent 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 such authority 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 to believe —
 - (i) as mentioned in paragraph (a) of subsection (2); and
 - (ii) that it is necessary to do so 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 Brunei Darussalam, to a police officer or immigration officer; or
 - (ii) in any other country which is a Convention country, to a person having functions corresponding to the functions in Brunei Darussalam of a police officer or 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 Brunei-controlled aircraft, in any country or, in the case of any other aircraft, in Brunei Darussalam, shall report the fact of, and the reasons for, that disembarkation to —

(i) a competent authority of the country of disembarkation; and

(ii) the nearest diplomatic or consular office 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 Brunei Darussalam, in the case of a Brunei-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 the reasons therefor —

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

(ii) to the nearest diplomatic or consular office 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 is guilty of an offence and liable on conviction to a fine not exceeding ten thousand dollars.

Provisions as to evidence in connection with aircraft.

6. (1) Where, in any proceeding before a court in Brunei Darussalam 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 Brunei Darussalam, there shall, notwithstanding any other law, be admissible in evidence before that court any deposition relating to the subject-matter of that proceeding previously made on oath by such person which was so made —

(a) in Brunei Darussalam, before a magistrate; or

(b) outside Brunei Darussalam, before a consular officer or a judicial officer of any foreign country.

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

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

(4) If a complaint is made to a consular officer that any offence has been committed on a Brunei-controlled aircraft while in flight elsewhere than in or over Brunei Darussalam, that officer may inquire into the case upon oath.

(5) In this section —

"deposition" includes any affidavit, affirmation or statement made upon oath,

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

Regulations.

7. The Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, may make such regulations as may appear to him to be necessary or expedient for carrying out or giving effect to this Order.

Amendment of Chapter 113.

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

"S1 1968 No. 1864	The Tokyo Convention Act 1967 (Overseas Territories) Order, 1968.	The whole	— .".
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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