



STATUTORY INSTRUMENTS.

S.I. No. 388 of 2019

EXTRADITION (INTERNATIONAL CONVENTION AGAINST THE
TAKING OF HOSTAGES) ORDER 2019

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WHEREAS, by the International Convention against the Taking of Hostages (the terms of which are set out in Schedule 1 to the following Order) done at New York on 17 December 1979 (referred to subsequently in these recitals as "the Convention") to which the State is a party, an arrangement was made with other countries that are parties to the Convention for the surrender of persons wanted for prosecution or punishment for the offences specified therein;

AND WHEREAS the Convention was acceded to on behalf of the State on 30 June 2005;

AND WHEREAS the Convention has also been ratified, or acceded to, by the countries specified in Part A of Schedule 2 to the following Order, subject to the reservations entered, and the declarations made, by certain of the countries concerned specified in Part B of that Schedule;

NOW I, SIMON COVENEY, Minister for Foreign Affairs and Trade, in exercise of powers conferred on me by section 8 (amended by section 57(3) of the Criminal Justice (Terrorist Offences) Act 2005 (No. 2 of 2005)) of the Extradition Act 1965 (No. 17 of 1965) (as adapted by the Foreign Affairs (Alteration of Name of Department and Title of Minister) Order 2011 (S.I. No. 246 of 2011)), and after consultation with the Minister for Justice and Equality, hereby order as follows:

1. (1) This Order may be cited as the Extradition (International Convention against the Taking of Hostages) Order 2019.
(2) This Order shall come into operation on 22 July 2019.
2. Part II of the Extradition Act 1965 (No. 17 of 1965) shall apply in relation to the countries set out in Part A of Schedule 2, subject to the reservations and declarations specified in Part B of that Schedule.

SCHEDULE 1

INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES

adopted by the General Assembly of the United Nations on 17 December 1979

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 of 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
- (c) 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 of 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 Protocols Additional 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
PART A

Afghanistan	Fiji
Albania	Gabon
Algeria	Georgia
Andorra	Ghana
Antigua and Barbuda	Grenada
Argentina	Guatemala
Armenia	Guinea
Australia	Guinea Bissau
Azerbaijan	Guyana
Bahamas	Haiti
Bahrain	Honduras
Bangladesh	Iceland
Barbados	India
Belarus	Iran (Islamic Republic of)
Belize	Iraq
Benin	Jamaica
Bhutan	Japan
Bolivia (Plurinational State of)	Jordan
Bosnia and Herzegovina	Kazakhstan
Botswana	Kenya
Brazil	Kiribati
Brunei Darussalam	Kuwait
Burkina Faso	Kyrgyzstan
Cabo Verde	Lao People's Democratic Republic
Cambodia	Lebanon
Cameroon	Lesotho
Canada	Liberia
Central African Republic	Libya
Chad	Liechtenstein
Chile	Madagascar
China	Malawi
Colombia	Malaysia
Comoros	Mali
Costa Rica	Marshall Islands
Côte d'Ivoire	Mauritania
Cuba	Mauritius
Democratic People's Republic of Korea	Mexico
Djibouti	Micronesia (Federated States of)
Dominica	Monaco
Dominican Republic	Mongolia
Ecuador	Montenegro
Egypt	Morocco
El Salvador	Mozambique
Equatorial Guinea	Myanmar
Eswatini	Nambia
Ethiopia	Nauru

Nepal	Serbia
New Zealand	Seychelles
Nicaragua	Sierra Leone
Niger	Singapore
Nigeria	South Africa
Niue	Sri Lanka
Norway	Sudan
Oman	Suriname
Pakistan	Switzerland
Palau	Tajikistan
Panama	Thailand
Papua New Guinea	Togo
Paraguay	Tonga
Peru	Trinidad and Tobago
Philippines	Tunisia
Qatar	Turkey
Republic of Korea	Turkmenistan
Republic of Moldova	Uganda
Republic of North Macedonia	Ukraine
Russian Federation	United Arab Emirates
Rwanda	United Republic of Tanzania
Saint Kitts and Nevis	United States of America
Saint Lucia	Uruguay
Saint Vincent and the Grenadines	Uzbekistan
San Marino	Venezuela (Bolivarian Republic of)
Sao Tome and Principe	Viet Nam
Saudi Arabia	Yemen
Senegal	Zambia

PART B

Reservations and Declarations made by States parties with respect to the International Convention against the Taking of Hostages

(Unless otherwise indicated, the declarations and reservations were made upon ratification, acceptance, approval, formal confirmation, succession or accession.)

Israel

Upon signature:

"1. It is the understanding of Israel that the Convention implements the principle that hostage taking is prohibited in all circumstances and that any person committing such an act shall be either prosecuted or extradited pursuant to article 8 of this Convention or the relevant provisions of the Geneva Conventions of 1949 or their additional Protocols, without any exception whatsoever.

[...]"

Malaysia

"[...]

2. The Government of Malaysia understands Article 8 (1) of the Convention to include the right of the competent authorities to decide not to submit any particular case for prosecution before the judicial authorities if the alleged offender is dealt with under national security and preventive detention laws.

[...]"

Montenegro

"The [Government of Yugoslavia] herewith states that the provisions of Article 9 of the Convention should be interpreted and applied in practice in the way which would not bring into question the goals of the Convention, i.e. undertaking of efficient measures for the prevention of all acts of the taking of hostages as a phenomenon of international terrorism, as well as the prosecution, punishment and extradition of persons considered to have perpetrated this criminal offence."

Mozambique

"[...]

Furthermore, the Republic of Mozambique declares that:

The Republic of Mozambique, in accordance with its Constitution and domestic laws, can not extradite Mozambique citizens.

Therefore, Mozambique citizens will be tried and sentenced in national courts."

Serbia

"The [Government of Yugoslavia] herewith states that the provisions of Article 9 of the Convention should be interpreted and applied in practice in the way which would not bring into question the goals of the Convention, i.e. undertaking of efficient measures for the prevention of all acts of the taking of hostages as a phenomenon of international terrorism, as well as the prosecution, punishment and extradition of persons considered to have perpetrated this criminal offence."

Singapore

"[...]

The Republic of Singapore understands Article 8(1) of the Convention to include the right of competent authorities to decide not to submit any particular case for prosecution before the judicial authorities if the alleged offender is dealt with under national security and preventive detention laws."

Ukraine

[Same reservation and declaration identical in substance, *mutatis mutandis*, as those made by Belarus.]

Viet Nam

"[...]

2. The Socialist Republic of Viet Nam, pursuant to Article 10 of this Convention, declares that it shall not take this Convention as the direct legal basis for extradition. The Socialist Republic of Viet Nam shall carry out extradition in accordance with the provisions of its domestic laws and regulations, on the basis of treaties on extradition and the principle of reciprocity."

L.S.

GIVEN under my Official Seal,
18 July, 2019.

SIMON COVENEY,
Minister for Foreign Affairs and Trade.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The effect of this Order is to apply the provisions of Part II of the Extradition Act 1965 to the countries listed in Part A of Schedule 2 to the Order in respect of offences under the 1979 International Convention against the Taking of Hostages. The Convention was acceded to on behalf of the State on 30 June 2005. The countries listed in Part A of Schedule 2 are those states parties to the Convention other than Member States of the European Union because extradition to and from those Member States is regulated by the European Arrest Warrant system. Part B of Schedule 2 lists the reservations and declarations, or parts thereof, made by certain states parties which relate to extradition under the Convention.

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