THE FINNISH–SOVIET HIJACKING TREATY

BY

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At the end of the 1960s aircraft hijacking was probably the crime that received the most international attention. This was due to the fact that hijacking had become alarmingly common and, furthermore, was carried out recklessly. With the number of hijackings climbing to 116 during 1968–69, according to available information, it is obvious that great apprehension was felt regarding the safety of aviation.[1]

As early as 1963, a convention on crimes and certain other actions committed on board an aircraft had been signed at a diplomatic conference in Tokyo.[2] Also included in this Convention are certain regulations regarding the illegal assumption of control of an aircraft (ch. IV). But it does not contain any direct regulations regarding penal sanctions, only certain statements regarding alternative courses of action to be followed by a state that has taken into custody a person guilty of illegal assumption of control of an aircraft (art. 13, pp. 2–5).[3]

In order to supplement the Tokyo Convention, the International Civil Aviation Organization (ICAO), in 1968, started to work on a convention for aircraft hijacking. The convention was adopted at a diplomatic conference at the Hague in 1970.[4] Later on, still a third international convention was drawn up to insure the safety of civil aviation. This Convention on the Prevention of Illegal Actions Threatening the Safety of Civil Aviation was adopted at a conference in Montreal in September, 1971.[5]

The Hague Convention led to new hijacking laws in a number of countries. Finland signed the Convention as early as January, 1971. At the meeting of the Nordic Council in February of the same year, a recommendation was adopted in which the Nordic governments were urged to ratify the Convention as soon as possible. Shortly thereafter the recommendation was followed. A new section was added to the Finnish Penal Code (ch. 34: 14 a) establishing two new crimes: hijacking an aircraft and illegal assumption of control of an aircraft; and in addition, the regulations concerning the sphere of application of the Finnish Penal Code underwent certain changes (ch. 1: 3 para. 2). Similar legislative additions were also made in the other Nordic countries.[6]

[1] See Bengt Broms, "Yhdistyneet kansakunnat ja lentokaappausten estäminen", *Lakimies* 1970, p. 816.
[2] Convention on Offences and Certain Other Acts Committed on Board Aircraft.
[3] See Sami Shubber, *Jurisdiction over Crimes on Board Aircraft*, The Hague 1973, p. 45.
[4] Convention for the Suppression of Unlawful Seizure of Aircraft.
[5] The so-called Montreal Convention (1971).
[6] See P. O. Träskman, "Ne punire sed dedere. En redogörelse för det finsk–sovjetiska kaparavtalet av år 1974", *FJFT* 1978, p. 476.

In regard to the perpetrator and his motive for hijacking it is necessary to divide aircraft hijacking into four groups.[7] Hijackings by persons mentally ill comprise the first group. Hijackings carried out with a traditional criminal purpose, e.g. with the intention of seizing cargo transported in the hijacked plane, belong to the second group. Hijackings which have as their only purpose to facilitate flight from one state to another, e.g. in order to escape political persecution, belong to the third group. And finally, hijackings which occur within the framework of a political struggle, where the hijacking, in other words, is a weapon aimed at a specific adversary, belong to the fourth group.

The first two groups of hijackings are not particularly complicated, seen from the point of view of penal policy. Such hijackings have been unanimously condemned, as have also other serious crimes. On the other hand, referring to the two latter groups of hijackings, the tendency has been to grant more rights and liberties than usual to defectors. And one of these liberties has been to discharge them from criminal responsibility even regarding crimes which the refugee was forced to commit in order to reach a safe, free state. Freedom fighters have always had their supporters. Though public opinion is not willing to approve of all the fighting methods used in the struggle for political freedom and independence, it is often willing to defend fighting actions to a certain point. Even the most extreme terrorists have their sympathizers.

These differences of opinion have been defended even in the international struggle to prevent aircraft hijackings. When the General Assembly of the United Nations, in 1969, dealt with aircraft hijackings, it condemned them, but at the same time it stressed that legal regulations on aircraft hijackings should not affect the privileges and responsibilities of states to respect the traditional right to political asylum. This has been interpreted as an admission of the fact that, in certain cases, a person may perpetrate a hijacking and seek political asylum in the state in which he lands, without being held criminally responsible for his action.[8] Political aircraft hijackings were defended even more clearly at the UN Conference on Penal Policy in Geneva in 1975. In accordance with certain opinions expressed there, aircraft hijackings, as well as other crimes, are justified if they are part of a revolutionary movement striving for political freedom.[9]

Differences of opinion were also noticeable during the work which led to the Hague Conference.[10] At the Hague Conference it became necessary to reject some proposals for defining crimes. These proposals, as such, would have

[7] See Nancy Douglas Joyner, *Aerial Hijacking as an International Crime*, Leyden 1974, p. 208.
[8] See Bengt Broms, *op. cit.*, p. 821.
[9] See Veli-Martti Metsälampi, "Some Remarks on the Basic Obligations of States in the Cases of Unlawful Seizure of Aircraft", in *Essays in Honour of Erik Castrén. Celebrating His 75th Birthday March 20, 1979,* Finnish Branch of the International Law Association, Helsinki 1979, p. 52.
[10] See Nancy Douglas Joyner, *op. cit.*, p. 165.

encompassed a noticeably broader scope of actions than those which finally formed part of the description of actions in art. 1 of the Convention. It was not possible at the conference to agree on the penalty that should be imposed for aircraft hijacking. Delegates had to be satisfied with the vague term "severe penalty" (art. 2).

Nor was it possible to agree on a regulation which would have obliged each state unconditionally to extradite a hijacker to another state which might have a closer point of connection with the crime. The final regulation on extradition in art. 8 of the Convention was formulated so that very great discretion was left to each state in this matter. In this regard, the Convention is relying on the principle of *aut dedere, aut punire*. This is apparent, above all, in art. 4 of the Convention, according to which each contracting state should formulate its own jurisdictional regulations so that an aircraft hijacker, within its territory, can be held responsible for a hijacking if he is not extradited to another state having a closer point of connection with him or his crime.

This rule allowing for a choice between legal transactions in one's own state or extradition to another state has been severely criticized by certain states, primarily perhaps by the Soviet Union.[11] This is related to the strongly condemnatory attitude towards hijacking adopted by the Soviet Union ever since the beginning of the 1970s.[12] Undoubtedly, the first hijacking which struck Soviet aviation in October, 1970, greatly influenced the development of this condemnatory attitude. This concerned a case in which two Lithuanians hijacked a Soviet aircraft on a domestic flight within the Soviet Union, and forced it to fly to Turkey. The perpetrators, a father and son, had been guilty of organized crime in the Soviet Union and illegally seized the aircraft in order to escape from the Soviet authorities who intended to reveal their activities. During the hijacking one of the air stewardesses was killed and the pilot and navigator were injured. The two perpetrators requested political asylum in Turkey, which was granted, despite strong pressure from the Soviet Union to have them extradited. After some time in a Turkish prison, the two hijackers were released and, according to reports, set up residence in the United States.

The condemnatory attitude of the Soviet Union was clear as early as November of that same year, when the Soviet delegates to the UN General Assembly supported a resolution advocating a penalty for aircraft hijacking, regardless of the motive.[13] Several Arab countries voted against the resolution on that occasion, as they felt that the resolution was principally directed towards them.

[11] *Ibidem*, p. 170.
[12] See Robert O. Freedman, "Soviet Policy toward International Terrorism", in Yonah Alexander (ed.) *International Terrorism. National, Regional and Global Perspectives*, New York and London 1976, p. 115.
[13] *Ibidem*, p. 122.

At the Hague Conference in December, 1970, the Soviet Union supported a more extensive definition of the crime than the one finally adopted in the Convention.[14] What the Soviet delegates to the conference advocated above all, however, was that the regulations on extradition be formulated so as to make extradition compulsory and that hijacking should never be considered a political crime. In other words, a state in which a person guilty of hijacking finds himself would never be able to reject an extradition request on the ground that the crime was a political crime. If there was disagreement between different states over jurisdiction in cases of aircraft piracy, the state in which the hijacked plane was registered would have precedence, so that the request for extradition should be granted, in the first place, to that country. The state in which or over which the criminal action occurred should come second, while the third place would go to the state in whose territory the effect of the hijacking was felt.[15] The same suggestion was later presented by the Soviet delegates at the Montreal Conference in 1971.[16]

The Hague Convention's regulations on the extradition of aircraft hijackers have not satisfied the Soviet Union (nor have the corresponding regulations in the Montreal Convention). The Soviet Union has pointed out that the stipulation that the grounds for extradition be decided according to the law of the state to which the extradition request has been directed, in practice often, perhaps even in most cases, leads to the rejection of the request for extradition. Objections have also been made to the fact that hijackers may be granted political asylum. As regards this aspect, it has been suggested that a particular state might grant political asylum to the hijacker, even though substantial grounds might be lacking, merely because the state to which the hijacker has fled regards the state requesting extradition as its political opponent.[17]

According to the proposal advanced by the Soviet Union, a person who has illegally seized an aircraft should not be granted political asylum. This view is defended by referring to the seriousness of the crime: it would be contradictory to grant asylum on humanitarian grounds to a person who has shown his disregard for basic human values by placing in great danger the lives and health of many people. When a person has seriously violated accepted human values, he must take the consequences and find himself deprived of such rights as are generally granted to people on humanitarian grounds.[18]

The Soviet Union's dissatisfaction with the multilateral international conventions has led to an attempt to compensate for these defects through national

[14] See Nancy Douglas Joyner, *op. cit.*, p. 170.
[15] See B. A. Kourinov, *AIDP XI^e Congrès International de Droit Pénal du 9 au 15 septembre 1974, Budapest, Compte-rendu sur les travaux scientifiques des sections du congrès*, Budapest 1977, p. 377.
[16] *Ibidem*, p. 377.
[17] *Ibidem*, p. 378.
[18] *Ibidem*, p. 379.

legislation and bilateral agreements. It can be mentioned that the penal codes of the Soviet Republics, besides considering hijacking as a criminal offence, also include the illegal transport of explosives and dangerous, inflammable materials on board an aircraft as criminal offences (e.g. sec. 217 of the Penal Code of the USSR). In this instance, the agreements concluded between the Soviet Union and its neighbouring states regarding the prevention of hijacking are of particular importance. Apart from the socialist countries, such states include Afghanistan, Iran, Turkey and Finland.[19]

It can hardly be maintained that Finland feels any great need for a special treaty with the Soviet Union on hijacking. Of course, such a treaty can be justified by saying that it can counteract hijacking more effectively than do the international conventions, i.e. the Tokyo, Hague and Montreal Conventions, and can moreover be regarded as a stage in the measures taken by Finland to counteract hijacking. Finland's official position on aircraft piracy has always been to take a neutral view of the matter, regardless of who the perpetrator was and regardless of the purpose of the crime.

However, it can be established that even without the Finnish–Soviet Hijacking Treaty, Finnish legislation offers sufficient means of dealing with aircraft piracy. Hijacking is a serious crime in Finland and the maximum penalty for the crime, 12 years' imprisonment, is relatively high for Finland (ch. 34: 14 a of the Finnish Penal Code). According to Finnish law, hijacking is a crime to which the principle of universality can be applied (ch. 1: 3). In other words, a hijacking can be punished in Finland regardless of where the crime was committed, regardless of the nationality of the perpetrator or the victim of the crime and regardless of whether or not the crime is punishable where it has been committed. Furthermore, the Finnish law concerning extradition allows for extradition regardless of whether an extradition treaty exists or not. As regards the registration of crimes in Finland involving individuals from the Soviet Union or vice versa, i.e. trials in the Soviet Union involving Finnish citizens, it should be mentioned that there is a treaty on legal assistance between the two states in question.[20]

Seen against this background, it may be assumed that a separate hijacking treaty between Finland and the Soviet Union came about mainly through the initiative of the latter, and that this initiative was primarily taken in an attempt to prevent illegal frontier crossings resulting from the hijacking of aircraft. The Finnish–Soviet Hijacking Treaty, therefore, can be seen as a part of the agreements between these nations that deal with "border incidents and controversies", or to be more specific, as a part of the regulation of the position

[19] P. O. Träskman, *op.cit.*, p. 486, and Veli-Martti Metsälampi, *op.cit.*, p. 62.
[20] Act 1980/605, Finnish Treaties Series no. 44.

of Soviet refugees in Finland.[21] This provides grounds for examining the hijacking treaty in connection with other regulations concerning the rights of refugees in Finland.

The Finnish–Soviet treaty (Treaty between the Government of Finland and the Government of the Union of Soviet Socialist Republics on Cooperation for the Prevention of Hijacking of Civil Aircraft) was ratified in August, 1974. The treaty was valid for five years in the first place, but automatically continues thereafter to be in force for five years at a time, if neither of the contracting parties revokes the treaty at least six months before the expiry of each particular five-year period (art. 14). Upon agreement between the contracting parties, the treaty can be changed or supplemented by signing separate documents, which are then considered an integral part of the treaty (art. 12).

For Finland, the treaty came into force through a decree imposed in 1975. The decree was preceded by a specially designed Act which made it possible to apply the treaty as valid law in Finland. This Act on extradition, in certain cases, of individuals guilty of hijacking civil aircraft ("the Hijacking Extradition Act") includes terms which basically correspond to the Finnish–Soviet Treaty. On certain points, however, the Act is more detailed, which means that it can offer guidance when interpreting the often rather vague wording of the treaty. The Act provides a basic framework and therefore can even be applied to the extradition of persons suspected of hijacking in situations where a treaty with another state may not yet exist (sec. 1).

In the preamble to the Finnish–Soviet Treaty reference is made to the friendly-neighbour relationship between Finland and the Soviet Union, which is based on the Treaty of Friendship, Cooperation and Mutual Assistance from 1948, as well as to the desire of the signatories to the treaty to develop mutual cooperation to prevent hijacking of civil aircraft. It is stated that the exceptional danger involved in the hijacking of civil aircraft has given rise to growing international alarm, and this alarm is, quite justifiably, also shared by the two contracting parties. Reference is also made to the fact that the signatories attach great importance to the development of international cooperation within civil aviation.

The treaty applies only to the hijacking of civil aircraft, and its scope of application, in this respect, is limited, as is also that of the Hague Convention (art. 3, p. 2). The hijacking of aircraft used by military forces, the police or customs officials falls outside the scope of the treaty. The hijacking of non-commercial national aircraft can, of course, be considered aircraft piracy according to Finnish law (ch. 34: 14 a), but such hijacking is not covered either

[21] See P. O. Träskman, "Lentokonekaappaus kansallisena ja kansainvälisenä rikoksena", *Rikosoikeudellisia kirjoitelmia* IV, Vammala 1980, p. 181.

by the provisions of the Hague Convention or by the Finnish–Soviet Hijacking Treaty.

The Finnish–Soviet Hijacking Treaty commits the contracting states to taking certain measures if an aircraft which is registered in one of the two states lands in the other state because of a hijacking (art. 1). In other words, the treaty does not apply if the hijacked aircraft is registered in a third state or in the state where it lands. The aim of the treaty is primarily to ensure that the state of registration will be in a position to exercise jurisdiction over the hijacking even when the hijacker is not within its territory.

The treaty's regulatory measures should be taken if an aircraft "because of a hijacking lands" within the territory of one of the signatory states. A more precise definition of "hijacking" is not given in the treaty, so the concept must be formulated with the assistance of other international treaties and legislation in the contracting states. The task is not all that simple since the Hague Convention (art. 1), the Soviet Penal Code (e.g. sec. 213), and the Finnish Penal Code (ch. 34: 14 a) are not exactly identical on this point. In addition, the Hijacking Extradition Act must also be taken into consideration (sec. 1).

The penal regulations of the Russian Soviet Federated Socialist Republic regarding aircraft hijacking are a typical example of a Soviet hijacking statute. The regulations are in three parts. Penal regulations concerning a simple aircraft hijacking are included in the first part; whoever hijacks an aircraft on the ground or in the air may be punished by imprisonment for three to ten years. The second part deals with hijacking of a more serious nature. According to these regulations, anyone hijacking an aircraft either on the ground or in the air, or who illegally assumes control of an aircraft with the purpose of hijacking it and who either uses or threatens violence, or jeopardizes the safety of the aircraft or whose actions have other serious consequences, is to be punished with imprisonment for five to fifteen years, with or without the confiscation of personal property.

The third part of the regulations refers to hijacking under particularly serious circumstances. It applies if a death occurs or serious bodily injuries have been inflicted during the hijacking. The penalty in this case is imprisonment for eight to fifteen years as well as confiscation of property, or the death penalty and confiscation of property.[22]

This Soviet regulation is clearly more extensive than the equivalent Finnish one. The regulation does not presuppose, as the Finnish regulation always does, that violence or the threat of violence has been used to commit the crime. Thus, according to the Soviet Penal Code, a person may be convicted of

[22] See B. Kourinov and V. Choupilov, "La Responsabilité du détournement d'aeronef selon la législation pénale sovietique", *The Reports of the Soviet Delegation, XIth International Congress on Penal Law*, Budapest 1974, p. 112.

"hijacking" when this would not be possible under Finnish law. This, in turn, could lead to a situation in which the Soviet Union would consider it justifiable to apply the regulations of the hijacking treaty, when according to the Finnish interpretation, "hijacking" has not been committed. The following example should clarify this point.

Let us suppose that a person who is not a Finnish citizen illegally assumes control, within Finnish territory, of an aircraft which is registered in the Soviet Union. He does not use violence or the threat of violence. He prefers a short flight on the plane and lands shortly thereafter at a Finnish airport. According to Finnish law, his action does not constitute either aircraft hijacking or illegally assuming control of an aircraft, but, rather, unlawful seizure of a motor vehicle. But according to Soviet law, he is guilty of a simple aircraft hijacking, which means that the Soviet authorities, referring to the Finnish–Soviet Hijacking Treaty, can demand that the treaty be applied.

In this case, however, extradition is excluded because of the Hijacking Extradition Act. If, according to the Finnish Penal Code, neither hijacking nor illegal assumption of control of an aircraft is involved, the prerequisites for extradition (as stated in the Hijacking Extradition Act) have not been fulfilled, and so the Finnish–Soviet Treaty cannot be applied. This regulation in the Hijacking Extradition Act means that the demand for double criminality laid down by Finland is a condition for applying the measures specified in the hijacking treaty,[23] even though this cannot be concluded from the treaty itself. Furthermore, the case should involve a "hijacking" in the state where the aircraft landed.[24]

One of the reasons for the difficulties of interpretation which arise in the aforementioned example is that the Finnish–Soviet Hijacking Treaty does not seem to require that the starting point of the hijacked aircraft and the actual landing point be located in different states, or that the starting point be located in the state where the aircraft is registered. The treaty is rather vague on this last point, too.[25]

According to art. 1, the treaty should be applied if an aircraft, registered in one of the contracting states, lands within the territory of the other contracting state as the result of a hijacking. This statute does not exclude the possibility of applying the regulations of the treaty, either if the starting and actual landing points lie within the same state or if the starting point is located within the territory of a third state. Judged on the basis of art. 1, it should therefore be possible to apply the treaty in the aforementioned example, with the starting

[23] See P. O. Träskman, *Straffrättsliga åtgärder vid brott med främmande inslag* I, Porvoo 1977, p. 252.

[24] Greater explicitness on this point of the treaty would be appreciated.

[25] See P. O. Träskman, "Ne punire sed dedere," *EJFT* 1978 p. 491.

point and the actual landing point located in Finland, as well as in the case of a person who is not a Finnish citizen, hijacking an aircraft registered in the Soviet Union after having taken off for Finland from a place located in a country other than the Soviet Union or Finland.

But certain provisions included in the treaty do not square well with this. According to art. 3 of the treaty, the contracting state within whose territory the hijacked aircraft has landed, must comply with the request of the state in which the aircraft is registered, and take steps to extradite to the latter state whoever is suspected of having committed a hijacking. Only if those suspected of the crime are citizens of the country in which the aircraft has landed is extradition not to be carried out.

It seems illogical to employ the term "extradition" in cases where the person concerned does not reside in or come from the state to which he is to be extradited. When the starting point of the hijacking lies outside of the state of registration, there can be no grounds for employing this term other than when referring to citizens of precisely that state in which the aircraft is registered. However, anything else that might support such a narrow interpretation of the Finnish–Soviet Treaty cannot be inferred from this. It would be going against the intention of the treaty if it did not apply, for example, if a Polish citizen were to hijack an aircraft registered in the Soviet Union and bound for Finland, after it had taken off from a Swedish airport.

According to the Finnish–Soviet Hijacking Treaty, the contracting state in which a hijacked aircraft has landed is obliged to take certain steps. First, the state in which the aircraft is registered should be informed of the hijacking and, in consequence, of the measures which may have been taken. Preparations should be made for the state of registration and the airline representatives to visit the landing site, as well as for the diplomatic and consular authorities of the state of registration to contact the crew and the passengers of the hijacked aircraft (art. 1, pp. 2 and 3).

The authorities of the state in which the aircraft lands shall assist the crew and passengers of the hijacked plane to continue to their destination and also, if necessary, provide medical assistance (art. 2). The authorities shall also take the steps necessary to service the aircraft and ensure its continued flight. Even so, the most important step to be taken by the authorities of the state in which the aircraft has landed is that of extraditing the suspected hijackers.

According to art. 3 of the Finnish–Soviet Hijacking Treaty, the contracting state within whose territory the hijacked aircraft has landed, should comply with the request of the state in which the aircraft is registered, and take immediate steps to extradite to the state of registration those persons who, after proper investigation, are suspected of the crime of hijacking. Extradition shall be carried out unless the suspects are citizens of the state in which they

have landed, in which case they should be indicted in that state (art. 3, p. 2). Extradition, as well as the legal formalities in the state in which the aircraft has landed, should be carried out "regardless of the real motives of those guilty of the crime" (art. 3, p. 3).

Thus the Finnish–Soviet Hijacking Treaty specifically provides for the compulsory extradition of a person guilty of hijacking an aircraft. This is precisely what the Soviet Union advocated at the international conference mentioned above dealing with aircraft hijacking. In other words, the aim which it was not found possible to incorporate in multilateral agreements has been realized in this bilateral treaty, albeit not without difficulty. Several of the most important problems will be touched on in what follows.

Measures for extradition shall be taken without delay by the state in which the aircraft has landed, after receiving the request from the state of registration. The request should be made through diplomatic channels and should be accompanied by supporting documents, among them a certified copy of the warrant for arrest. The decision regarding extradition is made by the Ministry of Justice in Finland, though the person to be extradited may contest the decision on the ground that the prerequisites for extradition have not been fulfilled, and thus have the case brought before the Supreme Court. In such an instance, the decision of the Supreme Court is binding on the Ministry of Justice; so if the Court finds that the prerequisites are lacking, the Ministry cannot grant the request for extradition. In other words, the procedure in this case is identical to the procedure regarding extradition in general.

The prerequisites for extradition are that one or more persons, "after proper investigation, are suspected of having perpetrated a hijacking". The degree of suspicion required has not been explicitly stated in the treaty, but is complemented by the Hijacking Extradition Act. Extradition can be carried out "only if an investigation reveals that the suspect is probably guilty of the crime". Therefore, also in this case, the stipulation for extradition in connection with any other crime is applicable.

Extradition shall not be carried out if the hijacking suspect is "a citizen of the ... state in which the aircraft has landed", though in such a case legal action should be taken in the state of which the suspect is a citizen (art. 3, p. 2).

This exception to the rule of compulsory extradition is specifically restricted to citizens of the state in which the aircraft has landed. The exception cannot be extended to include, for example, people who reside in the state in which the aircraft has landed but who are stateless foreigners or, in the case of Finland, citizens of another Nordic state.

On this point, the treaty is stricter than the Hijacking Extradition Act in the matter of persons guilty of hijacking a civil aircraft. Actually, the Act makes it possible to enforce legal action and penalty in Finland as an alternative to

extradition, "when certain reasons demand it", and apply this to citizens of all countries other than the one in which the aircraft is registered (sec. 5). It is likely that this could be applied, for example, if the suspect were a foreigner who had previously been a Finnish citizen or a foreigner permanently residing in Finland.

This restrictive point of view in the Finnish–Soviet Treaty is astonishing in certain respects, since according to the Finnish Penal Code, foreigners permanently residing in Finland are for all practical purposes on an equal basis with Finnish citizens.[26] According to the legislation giving effect to the European Convention regarding criminal extradition, Finland has stated (sec. 3) that the expression "citizen", in the convention, applies in Finland to "citizens of Finland, Iceland, Norway, Sweden and Denmark, as well as to foreigners permanently residing in any of these countries". In the extradition treaty with Great Britain and Northern Ireland, Finland has reserved the right to reject a request for the extradition of a Finnish, Danish, Icelandic, Norwegian or Swedish citizen (art. 4, p. 1). On the other hand, only Finnish citizenship can prevent extradition. Citizenship of another Nordic country or permanent residence in any of these does not provide the same degree of protection.

According to the Finnish–Soviet Hijacking Treaty, extradition shall be carried out "regardless of the real motives of those guilty of the crime" (art. 3, p. 3). It is quite clear that an attempt has been made, through this stipulation, to make it impossible to refuse extradition in the event of a hijacking being considered a political crime. By formulating the regulation so categorically, an attempt has been made, on the one hand, to avoid having to decide whether or not a crime is political, and, on the other hand, to avoid having to decide whether or not a crime which basically could be considered political, might nonetheless call for extradition. Thus, according to the treaty, extradition is possible even though the character of the crime might be decidedly political.

The treaty is quite unique in this respect. It differs on this point from most of the equivalent regulations in Finnish law. According to the Hijacking Extradition Act, a request for extradition should be denied if it involves a political crime (sec. 6). In the extradition treaties signed by Finland, a regulation has constantly been included that denies extradition for political crimes.[27] The only regulation that can be compared to this one is a similar one in the Nordic Extradition Act. This Nordic regulation makes it impossible to extradite a Finnish citizen for a political crime, but does make it possible to extradite a foreigner if the crime or an action of a similar nature is punishable under Finnish law (sec. 3).

[26] See P. O. Träskman, *Straffrättsliga åtgärder vid brott med främmande inslag* I, p. 250.

[27] See Björn Nybergh, "Tradition och dynamik inom utlämningsrätten", *Ars boni et aequi. Juhlajulkaisu Y. J. Hakulisen 70-vuotispäivänä 21.1.1972*, Helsinki 1972, p. 187.

The categorical formulation of the Finnish–Soviet Hijacking Treaty is justified by the great discrepancy which would otherwise occur in the procedure aimed at. Thus the weaknesses that the Hague Convention has been criticized for have been avoided, since it is not stated explicitly that the possible political nature of a crime does not prevent extradition. The most problematic group of hijackings, from a judicial point of view, has always been those based on a political motive.

The unconditional nature of the Finnish–Soviet Hijacking Treaty on this point has given rise to criticism. The criticism has concentrated, above all, on potential cases in which citizens of the Soviet Union who have been denied permission to travel abroad, have then hijacked an aircraft in order to leave the country. The critics have often referred to the European Conference on Security and Cooperation held in Helsinki in 1975, and to the provisions in the final document regarding cooperation in the humanitarian area, as well as in other areas.[28] It has been claimed that the Soviet provisions regarding permission to travel abroad and the penalties fixed in order to prevent illegal travel are inhuman, and that, because of the regulation regarding the compulsory extradition of a hijacker, the Finnish–Soviet Treaty also contains provisions that are inhuman.[29] The criticism suggests that extradition is always compulsory, unless the case involves a citizen of the state in which the aircraft has landed, and that Finland, therefore, could never deny a request for extradition to the Soviet Union of a Soviet citizen who has committed hijacking. However, neither that treaty nor any other official treaty between Finland and the Soviet Union support this view. In regard to the interpretation of this aspect in the Finnish–Soviet Hijacking Treaty, the following can be said:

The regulation on extradition in art. 3 of the treaty should be examined in relation to the regulation in art. 11. According to this, the stipulations in the hijacking treaty have no effect on the rights and opinions that the contracting parties may have regarding, among other things, the law of asylum. If this regulation is to be of any independent importance, the only feasible interpretation is that the question of granting political asylum to suspected hijackers is to be made independently, regardless of the regulations in the Finnish–Soviet Hijacking Treaty. In such cases the general regulations in the Finnish legislation regarding foreigners should be applied.

Internationally, the question of asylum is regulated principally by the 1951 Convention and the 1967 Protocol regarding the legal status of refugees.[30] In

[28] See Jacob Sundberg, "The Anti-Terrorist Legislation in Sweden", in *Terrorism and Criminal Justice: An International Perspective* (ed. R. D. Crelinsten), Lexington, Mass. 1979, p. 2.

[29] See Bengt Broms, *op. cit.*, p. 818.

[30] See *Flyktingskap*, *SOU* 1972:84, p. 33, and *Asyl. Svensk praxis i ärenden om politiskt flyktingskap*, *SOU* 1972:85, p. 16.

Finland, the regulation regarding asylum is included in the Foreigners Ordinance (sec. 24). Ever since Finland ratified the Refugee Convention and the Protocol regarding the legal status of refugees, the regulations therein have also been considered valid Finnish law.[31]

According to sec. 24 of the Foreigners Ordinance, a person who immediately upon arriving in Finland requests legal asylum as a political refugee and presents plausible grounds to support his request, is granted permission to reside in the country. If the person in question can show that he has good reason to fear persecution in his homeland on account of his race, religion, nationality or membership of a particular social or political group, this is sufficient grounds for granting asylum. A residence permit is granted by the Ministry of the Interior after procuring a statement from the Ministry of Foreign Affairs.

A person whose request for asylum is denied can be deported, but a so-called "convention refugee", a political refugee, has a much better chance of being granted legal asylum in the country than would otherwise be possible under the regulations regarding foreigners.

The latter conflict situation usually does not arise in Finnish law. The main rule is that political asylum cannot be granted if the person requesting asylum has committed an ordinary crime in his homeland or in his state of residence.[32] If, on the other hand, the person in question has committed a political crime, he can be granted a residence permit as a political refugee.[33] In accordance with what has been stated above, it is not possible to extradite him according to the general extradition law, nor according to the prevailing extradition treaties.

This conflict situation can arise, however, when putting into effect the Finnish–Soviet Hijacking Treaty. If a foreigner hijacks an aircraft to Finland and that hijacking is committed entirely for political reasons, there are no obstacles in the legislation regarding foreigners to granting political asylum to the hijacker,[34] although at the same time art. 3 of the hijacking treaty prescribes compulsory extradition.

In this situation it should be possible to grant asylum in Finland. The Finnish decision need not be bound by the Soviet interpretation of the inappropriateness of granting political asylum to the hijacker. Finland is also bound by international treaties other than the Finnish–Soviet Treaty. If there are sufficient grounds for granting political asylum, it would be clearly unsuitable and in conflict with basic humanitarian requirements, if Finland did not grant

[31] *Flyktingskap, SOU* 1972:84, p. 46.
[32] See Bengt Broms, *Kansainvälinen oikeus*, Helsinki 1978, p. 241.
[33] *Ibidem*, p. 241. See also *Asyl. Svensk praxis i ärenden om politiskt flyktingskap, SOU* 1972:85, p. 37.
[34] See Bengt Broms, *Kansainvälinen oikeus*, Helsinki 1978, p. 241.

political asylum and did not deny the request for extradition to the Soviet Union, simply in order to avoid any possible Soviet criticism.[35]

A further regulation in the Finnish–Soviet Hijacking Treaty, namely art. 10, modifies the rule regarding the compulsory extradition to the country in which the aircraft is registered. Accordingly, if several states put forward a request for the extradition of one and the same person, the state receiving the requests shall decide which of these shall be granted. Neither on this point can the interpretation of the treaty be considered completely self-evident.

It is surprising that the article in question does not refer to "returning" the person, but to "delivering" him. It seems correct to presume that "delivering" was used as a collective term and that it thus refers to the situation where the state in which the hijacked aircraft was registered requests that the state in which the aircraft has landed "deliver" (extradite) the suspected hijackers, while one or more other states have requested the "return" of the suspects because of a criminal action. In such a situation, the state in which the aircraft has landed has the right to decide if the suspect shall be delivered to the state of registration or returned to a third state.

One prerequisite enabling a third state to put forward a request for extradition is that it has the right to press charges against the person whose extradition has been requested. This can be the case mainly in three situations: when a part of the hijacking has been committed within its territory, when the suspect is a citizen of that state, or when the crime has been directed towards citizens of that state. In this situation the state in which the aircraft has landed will consequently have to consider if preference should be given to the request of the state of registration or to one of the requests for extradition made by the above-mentioned states.

It is clear that the general rule should be that the request for extradition made by the state of registration be given priority. Special grounds are required if this is not to be the case. As far as Finland is concerned, a foremost reason would be if Finland had concluded a bilateral treaty on extradition with the third state in question. Otherwise Finland cannot be expected to have any binding commitments to sanction the request for extradition, in which case the request for "delivery" by the state of registration should be given priority. Even if the request of the state of registration competes with that of a third state with which Finland has concluded an extradition treaty, the right of priority of the state of registration should be particularly strong.[36]

The extradition of a hijacking suspect can be postponed in certain cases. According to art. 6 of the Finnish–Soviet Hijacking Treaty, the prerequisites for postponement are three: (1) the person to be extradited must have commit-

[35] See P. O. Träskman, "Ne punire sed dedere ...", *FJFT* 1978, p. 503.
[36] This conclusion is based on the ratio of the treaty.

ted, *within* the territory of the state in which the aircraft has landed, *another* crime which is *more serious in character* than the crime referred to in the extradition request; (2) the said crime must have *caused damage* to juridical persons or citizens of the state in which the aircraft has landed or of a third state; and (3) *proceedings* must be taken against the hijacker in the state in which the aircraft has landed. It is doubtful that any great problems could arise in interpreting this regulation. It might be necessary to note that the intervening crime must be very serious indeed in order to even lead to postponement of extradition being considered. Because of the threat of a severe penalty for aircraft hijacking, only those crimes punishable by life imprisonment would justify postponement.

According to art. 7 of the Finnish–Soviet Hijacking Treaty, the extraditing state may require as a condition for extradition that the person to be extradited must not be prosecuted in the state to which he is to be extradited for any crime other than hijacking, nor extradited to a third state without the consent of the state granting the request for extradition. This regulation corresponds with related acts and treaties on extradition.[37]

In one respect, however, the Finnish–Soviet Hijacking Treaty differs from the extradition act and other extradition treaties contracted by Finland. The Finnish–Soviet Hijacking Treaty does not allow the state receiving the request for extradition to specify as a condition for granting the request that the extradited person be not sentenced to death, or that a death sentence that might have been passed be not executed.[38]

From the Finnish point of view this should be considered a serious restriction. In opposition to each other here can be seen, on the one hand, the strongly negative attitude towards the death penalty in the Finnish Penal Code, and, on the other hand, the fact that in the Soviet Union the death penalty can be imposed for one of the crimes stated in the Finnish–Soviet Treaty, the one that can lead to extradition. This is coupled with the fact that in the Soviet Union the death penalty is still imposed and carried out for the most serious crimes.[39]

The treaty can be criticized on this point. It is difficult to reconcile the strongly critical standpoint against the death penalty which was expressed in 1972, during the preparation of the act which abolished this penalty from the Finnish Penal Code,[40] with the direct acceptance of this penalty denoted by the Finnish–Soviet Treaty. With good reason it could be maintained that the difference, on the one hand, between a state which employs the death penalty

[37] See Kaarle J. Lehmus, "Suomen tekemät sopimukset ilma-alusten laittoman haltuunoton ehkäisemisestä", *Suomen Poliisilehti* 1977, p. 20.
[38] See the Finnish Hijacking Extradition Act, sec. 12.
[39] See "Kuolemanrangaistus", *Amnesty Internationalin raportti*, p. 148.
[40] See the Finnish Government Bill 1972/1.

and, on the other hand, one that legally assists another state to impose that penalty is non-existent. The Finnish–Soviet Hijacking Treaty should be supplemented on this point, for example, by making it possible to state as a condition for extradition that a possible imposition of the death penalty will not be carried out.[41] A regulation to this effect would hardly diminish the effectiveness of the treaty in combatting aircraft hijacking.

The Finnish–Soviet Hijacking Treaty has been put into practice once. On the evening of July 10, 1977, a Tupolev 134, belonging to the Soviet airline Aeroflot, landed at the Helsinki-Vantaa airport. The plane had been on a regular domestic flight from Petroskoi to Leningrad. During the flight two men, 22-year-old Gennadij Selusjko and 19-year-old Alexandr Zagirnjak, by threatening to blow up the plane with hand-grenades they claimed to have in their possession, forced the crew to redirect the flight route to Stockholm. The pilot of the plane felt it necessary to at least give the appearance of complying with the request of the two hijackers; he claimed to be flying to Stockholm while in reality he was heading towards Helsinki. In any case the plane's fuel supply would not have been sufficient to enable it to fly all the way to Stockholm.

Shortly after landing at the Helsinki-Vantaa airport, the plane's crew managed to leave the aircraft. The passengers, however, were detained on board by the two hijackers. Negotiations were initiated by the Finns; a large police and military force was ordered to the airport. The Cabinet of the country was also convened, and when a sufficient number of Ministers to form a quorum had arrived during the night, a meeting was held at the airport. During the next day and night there were always five Ministers at the airport.

During the negotiations between the Finnish authorities and the two hijackers, the hijackers demanded fuel and a crew to continue their flight to Stockholm. After it became clear that Sweden was not willing to give the hijacked aircraft permission to land, Norway, Austria or West Germany were named as alternative points of destination. The hijackers supported their demand by continually threatening to blow up the plane. During the negotiations, however, they released the majority of the passengers at various intervals. Finally there were only three passengers left as hostages.

In the early dawn of July 12, the last of the hijackers' hostages escaped. Shortly thereafter the hijackers gave themselves up to the Finnish authorities. It became evident that the hijackers were completely unarmed. The hand-grenade that one of the hijackers, Selusjko, had shown the crew of the aircraft during the hijacking was a harmless, uncharged training hand-grenade.

Shortly after the two hijackers had been taken into custody by the Finnish

[41] See the Treaty on Extradition between Finland and Great Britain, art. 3.

authorities, the Finnish Ministry of Foreign Affairs stated that it was obvious that the two men should be turned over to the Soviet Union. The Finnish authorities were only waiting for an official request from the Soviets. Such a request was received later that day. The two men were interrogated by the Finnish criminal police before being extradited to the Soviet Union on July 13, in accordance with the decision made by the Finnish Cabinet. They were then indicted according to Soviet law and sentenced to imprisonment for fifteen and eight years respectively.

It is not evident from the sources available whether or not the hijackers requested permission to remain in Finland. Undoubtedly, the Finnish authorities were not particularly willing for this to happen, but, as is clear from the above account, rather took it for granted that they should be extradited to the Soviet Union. The action of the Finnish authorities in this case can hardly be considered entirely correct. The United Nations Refugee Commission even considered it necessary to reprimand Finland for having, on this occasion, clearly neglected the commitments to which Finland was pledged according to the Refugee Convention of 1951. This should be regarded as a blunder which ought not to be repeated.[42]

[42] See P. Weis, "Asylum and Terrorism", *The Review of International Commission of Jurists*, no. 19, 1977, p. 42.