Legal Aspects Of Air Piracy

The recent hijacking of a number of planes by an independent group calling themselves the "Popular Front for the Liberation of Palestine" makes still more remote the chances of peace in the Middle East. With the greatest confidence and with virtual impunity this small group has managed to confuse an already confused issue still further and their action brings out as clearly as nothing else can, the impotence of powers like England and America before the actions of a small band of outlaws.

Thousands have condemned their actions, U Thant has called it "a savage and inhuman act" but air services have been disrupted, a sense of insecurity has been introduced into air traffic and the lives of 264 persons hung in the balance for four days.

Up to a few years ago, air piracy had been an act committed by a few possibly unbalanced criminals. Now it has assumed a political complexion. The first incident occurred in Greece, where on the 22 July 1970 in Athens a Palestinian commando threatened to blow up a Boeing 727 unless the Greek Government released seven Arabs who had been detained in Greece for sabotage against Israelis and the **El Al** office in Athens. The Greek Government delivered the seven Arabs.

On the 6th September came the forced landing of a DC-8 of Swissair and a Boeing 707 of TWA on a primitive airfield at Zarka in Northern Jordan. On the same day a Pan Am Boeing 747 Jumbo Jet was taken to Cairo airfield and all £10 million worth of it blown up.

Finaly on the 9th September a VC 10 of BOAC was also forced down at Zarka. This enabled the Liberation Front to blackmail the Governments of the U.K., of the Federal Republic of Germany and of Switzerland into releasing seven hostages.

The incidents have been embarrassing to major powers and they raise the important issue of the practical fulfilment of International Law.

by GODWIN MUSCAT AZZOPARDI, B.A., Dip. Notary Public

International Law is difficult to enforce because it is, of its very nature. concerned with a multitude of states with different political ideologies. It is not antithetical to speak of law as being intimately wound up with political ideologies since law is essentially the product of contingencies arising out of political and social circumstances. International agreement on important matters, although urgently required, has been restricted to a minimum. The problem before us raises this issue of unification although there are other basic factors involved. It must be noted however, that in this particular case the problem is more complex than usual. Here we have to deal, not with a recalcitrant state, but with a **sui generis** organisation with no defined territorial base.

Under Public International Law a state has the right to protect its citizens wherever they may be. If, for instance, State A unlawfully detains nationals of State B, State A can take steps to procure their release. Over the centuries machinery has been evolved for attaining the peaceful settlement of such matters between states: for example, reference may be made to an **ad hoc** Arbitration tribunal, to the mediation of a friendly state or of an In-

ternational Organisation and so on. In the matter at issue. how ver, it is not a sta e which has committed the unlawfu detention. While State B in the above example could, if all else failed, or for that matter, before anything else was tried (and this depends on the basic details of military power, political ideology and the "aggression factor" of its leaders) take reprisals against State A, this is impossible in the case of the "Liberation Front". The only possible way of exerting pressure lies in the holding of hostages as England held Leila Khaled; but this, of course, has a very limited application.

The fact that the guerilla ensemble is not a state **ut sic** brings out another interesting aspect. Given the fact that it is otherwise impossible to stem this spate of international outlawry, can the Front, or for that matter, any other hijacker, be regarded as a perpetrator of a crime "jure gentium"? This concept implies that, in the words of J.G. Starke

"inasmuch as by general admission, the offence is contrary to the interests of the international community it is treated as a delict **jure gentium** and all states are entitled to apprehend and punish the offenders."

Hitherto the concept has been extended to piracy, war crimes and traffic in drugs, women and children. By analogy to piracy at sea, one could conceivably call hijackers "the common enemy of mankind". The Convention on the High Seas of April 29, 1958 defines piracy as "any illegal acts of violence, detention or any act of depradation committed for private ends by those aboard a private ship or private aircraft . . . " The facts fit into this definition nicely and afford good ground for defining hi-jacking as an international crime.

This seems to be the line taken by the Convention "On Offences and certain other acts committed on board aircraft" convened at Tokyo in 1963. Moreover, following recent events, the Council of Europe entrusted its Legal ffairs Committee to make a report to the Consultative Assembly "on air safety and unlawful seizure of aircraft" nd a report was presented by Mr. Piket (Dr. J. Cassar Galea was on the Committee) on the 19th of September 970.

The recommendation of the Consul tative Assembly emphasised "the duty of every state into which a civil aircraft is forcibly abducted promptly to release the aircraft, passengers and crew to punish severly or to ensure the severe punishment of persons convicted of the offence of air piracy and to dissociate itself from acts of political terrorism directed against commercial air lines, regardless of political circumstances involved".

It is submitted that the last phrase is utopian and could have been omitted. It is the regard for political conseqeunces which has negatived much of the work done by the United Nations and other international Organisations The Recommendation goes on to state that an effective solution to the pro blem can only be reached if Governments are determined to co-operate in its control and it urges member states to ensure that their respective municipal laws contain adequate provisions against all acts of unlawful interference with civil aircraft.

It is here that international agreement can be effective. It is basically at the national level that international problems are solved and a water-tight system in each state will effectively prove an antidote to hijacking. Presumably each state should not limit its jurisdiction to its own nationals or to those persons domiciled within its territory in this matter. States should punish these offenders, whatever their

domicile or nationality, on the basis of International Criminal Law.

It is not a valid argument to exclude piracy from the category of crime jure gentium because the intention behind the hijacking is political, since here it is not only Israelis who suffer, but also innocent passengers of different nationalities. Moreover nothing can justify the taking of life unnecessarily and the wanton destruction of £10 million worth of man's ingenuity.