Criminal Jurisdiction of States over Hijackers of Aircrafts under the Hague Convention: Implications for Ethiopia

Aschalew Ashagre Byness*

Abstract

The aviation technology faced serious problems as of the 1960s. The most heinous of the problems has been the crime of hijacking of aircraft. Because of the severity of this crime, the international community responded to it, inter alia, by international Conventions, the most important one being the Hague Anti-hijacking Convention of 1970. This article is aimed at investigating the relevant provisions of the Convention on criminal jurisdiction of States Parties to the Convention. More specifically, the article analyzes issues regarding the assumption of criminal jurisdiction of States parties, the obligation of states parties in connection with prosecution and/or extradition of hijackers, the status of extradition under the Convention, conflict of criminal jurisdiction of states and the implication of the provisions of the Convention, on criminal jurisdiction, to Ethiopia – a party to the Convention as of 1979.

In this piece, the author argues that the Hague Convention has left some critical questions unanswered though it contains several praiseworthy provisions on criminal jurisdiction of states. Specifically, the Convention does not clearly define the constituent elements of the crime under consideration; nor does it contain rules regulating conflict of criminal jurisdiction of states with regard to prosecution and/or extradition of hijackers. In general, it is hoped to show that the Hague Convention contains inbuilt deficiencies that must be rectified so as to effectively combat the crime of hijacking.

Introduction

The desire of mankind to fly in the sky was a long held dream. This dream was realized when the first controlled flight was undertaken at the dawn of the 20th century. Aviation, which has made swift global communication possible,[1] has been facing various problems among which hijacking of aircraft remains to be the most serious one. Particularly, as of the

* LL.B, LL.M, Lecturer in Law and Consultant and Attorney- at- Law. The author is very much indebted to Ato Kokebe Wolde of Bahir Dar University, School of Law, who invited me to make this contribution. I also owe debts of gratitude to the anonymous reviewers who meaningfully helped me to improve the quality of this piece. However, I alone will be responsible for any flaw existing in this work. The author may be reached at ashagreaschalew@yahoo.com.

[1] See, *The New Encyclopedia Britannica*, 1995, Vol. 28, 15th ed., p. 801.

1960's,[2] hijacking has increasingly threatened the safety of aviation globally.[3] Amidst this, the international community has come up with the 1963 Tokyo Convention,[4] the 1970 Hague Convention[5] and the 1971 Montreal Convention[6] so that the threats of hijacking are fought in a coordinated manner. Of all these three conventions, it is the 1970 Hague Convention that is anti- hijacking convention *per se.* Hence, the focus of this work is the Hague Convention: the other two conventions are thus beyond the scope of the present analysis.

Ethiopia signed the Hague Convention in 1970 and ratified it in 1979.[7] This means that the Convention has imposed an international obligation on Ethiopia as of 1979. Correspondingly, Ethiopian courts do have the power to exercise criminal jurisdiction over hijackers by invoking the relevant provisions of the convention. Most importantly, the provisions of the Hague Convention must be applied in Ethiopia to discharge Ethiopia's international obligation and to bring hijackers to justice as doing so is playing appropriate role towards ensuring global, regional as well as national peace and security.

Ethiopia has been a victim of hijacking of aircraft on several occasions.[8] Even more, Ethiopia is threatened by the problem of terrorism attributable to a

---

[2] McWhinney, E., *Aerial Piracy and International Terrorism: The Illegal Diversion of Aircraft and International Law*, Martinus Nijhoff Publishers, the Hague, 1987, 2nd, revised edition, p. 7.

[3] The first hijacking incident in recorded history involved the Peruvian revolutionaries, who in 1930, seized a mail plane which belonged to Pan- American; see Johnson, D., *Rights in Airspace*, Manchester University Press, Manchester, 1965, p. 8

[4] The Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, Tokyo, 1963 (in force since 1969).

[5] The Hague Convention on the Suppression of Unlawful Seizures of Aircraft, Hague, 1970 [hereinafter Hague Convention].

[6] Convention for the Suppression of Unlawful Acts against the Safety of Aviation, Montreal, 1971.

[7] Ethiopia signed the Hague Convention on the 6th December 1970 and ratified it on the 26th of March 1979. Hence, the Convention is part and parcel of the Ethiopian law by virtue of Article 9(4) of the Constitution of the Federal Democratic Republic of Ethiopia, 1995, Proc. No. 1/1995, *Federal Negarit Gazeta*, Year 1, No.1. The relevant provisions of this Convention have also tremendously influenced the contents of the 2005 Criminal Code of the Federal Democratic Republic of Ethiopia, 2005, Proclamation No. 414/2004, *Federal Negarit Gazeta*, Year 10, No. 59 [hereinafter Criminal Code]; See Article 507 of the Code.

[8] See Girma Admasu, *Hijacking of Aircraft under Ethiopian Law*, Senior Thesis, Unpublished, Faculty of Law, Addis Ababa University, 1995.

number of factors.[9] Though incidents involving hijacking – an element of international terrorism[10] –have been absent in recent times, the threat is always there. Thus, it is important to give attention to criminal jurisdiction of states since it is not possible to try and punish hijackers without having legitimate criminal jurisdiction.

The focus in this article is on the provisions of the Hague Convention dealing with criminal jurisdiction of states. Although, Ethiopia has been a party to the Hague Convention and has made it an integral part of its domestic laws, little or nothing has been written in Ethiopia regarding criminal jurisdiction of states over hijackers under the Convention. Due to this, much is not known about the convention in general and the articles of the Convention which particularly deal with criminal jurisdiction of states over hijackers in particular. Moreover, the Convention, though drafted by highly renowned experts, calls for some critical analysis in relation to criminal jurisdiction of states over hijackers. This piece will be important for Ethiopian readers as the discussions made throughout this modest work do have relevant repercussions for Ethiopia. Therefore, this piece is aimed at critically examining the provisions of the Convention regulating criminal jurisdiction of states and the other alternative obligation – extradition. It is hoped to contribute to the knowledge (among various stakeholder) about the criminal jurisdiction of states over hijackers in general and criminal jurisdiction of Ethiopian courts in particular.

The article is divided into four sections. In the immediately following section, attempt is made to introduce the Hague Convention by concentrating on its adoption, purpose, scope and some innovative approaches of same. Section Two is devoted to the examination of criminal jurisdiction of states by focusing on the following themes: How can states assume criminal jurisdiction over hijackers? Is prosecution of hijackers mandatory or optional? What is the status of extradition under this convention? Are prosecution and extradition alternative obligations? How can conflict of jurisdiction of states party to the Convention be resolved? The third section analyses criminal jurisdiction of Ethiopian courts over hijackers and the allocation of such jurisdiction in the Ethiopian federal set up. Finally, concluding remarks are provided.

---

[9] See generally Weldesellassie Weldemichaiel, *Terrorism in Ethiopia and the Horn of Africa: Threat, Impact and Response*, Mega Publishing Enterprise, Addis Ababa, 2010.

[10] *Ibid*.

1. The Hague Convention: An Overview

1.1. Adoption of the Hague Convention

Since the adoption of the Tokyo Convention in 1963, the international community became more sensitive to the problem of hijacking than ever before and greater concern had been overtly accorded to the phenomenon. As a result, a large number of representatives of countries (from 77 states)[11] participated at the Hague Convention. Numerous hijacking incidents witnessed in this period served as a pushing factor for active state participation in the Convention.[12]

Informed by the weaknesses (in squarely dealing with issues of extradition and prosecution of hijackers) of the already adopted Tokyo Convention, participants tried to make the Hague Convention potent. The planners of the new Convention utilized the Tokyo agreement as vantage point from which an international law of hijacking could effectively be implemented. In this regard, K.E. Malmborg writes:

> "The impetus to the new convention stemmed not only from the bland provisions of the Tokyo Convention, but also from the new upsurge of aircraft seizures, seizures tantamount to international blackmail which posed an even more urgent and drastic threat to international civil aviation than in the past."[13]

During the adoption of this Convention, uncertainty arose about the potentially conflicting nature of the newly proposed provisions of The Hague Convention *vis-à-vis* those agreed upon in Tokyo.[14] The U.S.A, even before becoming a party to the Tokyo Convention, made overtures to the International Civil Aviation Organization (ICAO) demanding a draft protocol proposal the purpose of which would be dealing solely with the crime of hijacking of aircraft to secure some provisions for mandatory extradition of the offender(s). This protocol proposal was meant to counter unforeseen nuances arising from two international conventions over essentially the same

---

[11] The participants include a representative from the former U.S.S.R which was not a party to the Tokyo Convention; see Joyner, N., *Aerial Hijacking as an International Crime*, New York, Oceana Publication, 1970, p. 171[hereinafter Joyner].

[12] *Ibid*.

[13] Malmborg, K., "Adress by K.E. Malmborg", *American Journal of International Law*, Vol. 65, No.4, 1971, p.77.

[14] McWhinney, *supra* note 2, p. 76

international problem.[15] However, it was not accepted by the ICAO Legal Committee and Sub-committee since states would become parties to both conventions without inconsistent obligation.[16]

The incorporation of mandatory prosecution of hijackers was opposed by the ICAO. But the legal committee of the ICAO was directed to examine both the development of model national legislation and the possibility of an international convention dealing with the prosecution of hijackers. Thus, in 1968 these two considerations were given attention by the ICAO and in February 1969 the ICAO Secretariat recognized that certain beneficial objectives could be realized from both.[17] Accordingly, the Secretariat noted that:

> "The above objectives could be attained either by the enactment of uniform national legislation by consenting states or by means of an international instrument. Such instrument might be one which would leave untouched the Tokyo Convention, some provisions of which would remain applicable to certain complementary provisions which, without amending the Tokyo Convention, would fill gaps and would also include other provisions which a proper study of the subject might indicate."[18]

Subsequent meetings of the ICAO sub-committee on February 10-22, 1969 and September 23-October 3, 1969, supported the latter contention i.e. that a multilateral convention would be the more effective means to see that a state in whose territory the hijacked aircraft has landed would either prosecute the hijacker itself or else extradite the same for prosecution to some other state having jurisdiction. The draft convention produced by the sub-committee was adopted with only minor revisions made by the legal committee.[19]

All these preparations and contentions came finally into fruition when a special diplomatic conference was convened from 1-16 December 1970 at The Hague to consider the draft proposal. The result of the Conference was the Convention for the "Suppression of Unlawful Seizures of Aircraft", more commonly known as The Hague Convention.[20] Adopted on the 16th of December 1970 (after 74 of the 77 countries represented at the diplomatic

[15] Joyner, *supra* note 11, p. 166.
[16] Malmborg, *supra* note 13, p. 76.
[17] *Ibid*.
[18] McWhinney, *supra* note 2, p. 167.
[19] Malmborg, *supra* note 13, p. 42
[20] *Ibid*.

conference voted for it),[21] The Hague Convention entered into force on 14 October 1971[22] as per Article 13(3) of the same convention which stipulates that it is to enter into force thirty days after ratification by ten states signatory to the Convention.

1.2. Purpose and Scope of the Hague Convention

A look at its preamble helps better understand the purpose of The Hague Convention. The Preamble[23]states:

> "the states parties to this convention, considering that unlawful acts of seizure or exercise of control of aircraft in flight jeopardize the safety of persons and property, seriously affect the operation of air services, and undermine the confidence of the peoples of the world in the safety of civil aviation; considering that the occurrence of such acts is a matter of grave concern; considering that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders."

The paramount purpose of The Hague Convention, as discerned from the preamble quoted above, relates to suppression of unlawful aircraft seizure. In other words, The Hague Convention was adopted for the purpose of fighting the expansion of the aerial hijacking problem which evolved from an essentially limited U.S.A-Cuban[24] regional problem to a more genuine worldwide problem affecting equally a number of countries with differing political and ideological bases.[25]

As far as its scope is concerned, the Convention covers all cases of hijacking of aircraft with some exceptions. A closer look at Articles 1 and 3 of the Convention explicates the scope. Article 1 of the Convention provides that:

---

[21] *Ibid*

[22] *Id*, P. 45

[23] Hague Convention, *supra* note 5.

[24] On this point, Edward McWhiney writes: "at the opening of the 1960s, a hijacking of aircraft was transformed from 'flight to freedom' of the Cold War Era to rash of armed hijackings in the USA as most of the hijacking incidents occurred between USA and Cuba attributable to ideological differences and confrontations. However, the hijacking incident did not remain humorous incidents or nuisance of civil air transportation in the USA. Rather, it soon diffused around the world. See McWhiney, *supra* note 2, p. 78.

[25] *Id*, p. 41

> "Any person who on board an aircraft in flight
>
> a. Unlawfully, by force or threat thereof, or by any other form of intimidation, seizes or exercises control of that aircraft, or attempts to perform any such act or;
> b. Is an accomplice of a person who performs or attempts to perform any such act commits an offence (herein after referred to as the offence)"

The Convention is applicable to any person on board an aircraft who commits the afore-mentioned acts. That the Convention is applicable to passengers, crew members and copilot is not arguable. However, whether the convention applies to the pilot is unclear. What if the pilot diverts the aircraft he pilots from the normal route and lands in another place without any good reason? Cannot he be considered a hijacker? It may be argued that since there is no force or threat thereof directed against the pilot, the act of diversion of an aircraft from its normal route to some other place cannot be considered as an act contemplated by Article 1 of the Hague Convention. But what must be taken into consideration are the unlawfulness of the diversion and the motive of the pilot. It is thus submitted that a pilot who unlawfully diverts an aircraft or unlawfully seizes the same is a hijacker for the purpose of the Convention.

Article 1(b) clarifies that attempted offense and complicity are within the purview of the convention. As to the type of aircraft, Article 3(2) of the Convention stipulates the Convention does not apply to aircraft used in military, customs and police services. Therefore, only civil aircraft are covered. With regard to the spatial coverage of the convention, sub-3 of the same article provides that "this Convention shall apply only if the place of take off or the place of actual landing of the aircraft on board which the offence is committed is situated outside the territory of the state of registration of that aircraft." It is also immaterial whether the aircraft is engaged in an international or domestic flight. Finally, the aircraft concerned must be in flight.[26]

[26] In applying the Convention appropriately, understanding as to when an aircraft is considered in flight is of paramount importance. The Hague Convention, under Article 3(1) provides: "for the purpose of the Convention, an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when such door is opened for disembarkation. In the case of forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft, for persons and property on board."

1.3. Some Innovative Approaches of the Hague Convention

The Hague Convention, in trying to rectify the Achilles' heel of its predecessor – the Tokyo Convention - contains some innovative provisions. For instance, Article1 of The Hague Convention defines the crime of hijacking more explicitly than the Tokyo Convention. Though it does neither explicitly recognize aerial hijacking as an offence against customary international law nor specify that states should have universal jurisdiction over the offender, the Convention makes it evident that there is an international consensus that hijacking is an illegal act subject to prosecution and punishment under municipal laws. It obligates contracting states to take steps to establish their legal jurisdiction over unlawful seizure of aircraft and any other act of violence against passengers or crew committed in connection with hijacking. In this regard, Article 4 (1) of the Convention stipulates that:

> "1. Each contracting state shall take such measures as may be necessary to establish its jurisdiction over the offence and any other act of violence against passengers or crew committed by the alleged offender in connection with the offence, in the following cases:
>
> a. When the offence is committed on board an aircraft registered in that state;
> b. When the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;
> c. When the offence is committed on board an aircraft leased without crew to a lessee who has his principal place of business or if the lessee has no such place of business his permanent residence, in that state."

In addition to obligating the contracting states to assume criminal jurisdiction in the afore-said manner, the Hague Convention further extends state jurisdiction. Under Article 4(2), each contracting state must take such measures as may be necessary to establish its jurisdiction over the offence where, the alleged offender being present in its territory, it does not extradite him pursuant to Article 8 to any of the states mentioned in paragraph 1 of Article 1. Consequently, any party to the convention, in whose territorial jurisdiction an alleged hijacker is found, can assume jurisdiction over him or extradite him according to its municipal laws.

Interestingly, Article 4 (3) of the convention does not exclude any criminal jurisdiction exercised in accordance with national law.[27] Moreover, the Hague Convention, unlike the Tokyo Convention which failed to institute an international system to deter hijackers, commits contracting parties to prosecute the offender if he is not extradited. Extradition is not, of course, specifically required, but Article 7[28] of the convention renders extradition the only acceptable option to prosecution. Therefore, the procedural provisions of the Hague Convention (regarding the detention of the accused hijackers) are made more effective by the forceful provisions of the above cited article. This is because Article 7 requires prosecution without exception whatsoever. Besides, the obligation to either prosecute or extradite binds contracting states regardless of the location of the offence. Hence, the rewards and opportunities to escape punitive actions would be eliminated for potential hijackers.[29]

Another important aspect of The Hague Convention involves Article 8 which provides in part as follows:

> "1. The offence shall be deemed to be included as an extraditable offence in any extradition treaty existing between contracting states, contracting states undertake to include the offence as an extraditable offence in every extradition treaty to be concluded between them.
> 2. If a contracting state which makes extradition conditional on the existence of a treaty receives a request for extradition from another contracting party with which it has no extradition treaty, it may at its option, consider this convention as a legal basis for extradition in respect of the offence."

The above quoted provision serves as a legal basis for extradition of hijackers among contracting parties (to The Hague Convention) which may

---

[27] As would be discerned from the discussions under part three, grounds of criminal jurisdiction over hijackers, which are recognized under the Hague Convention, are not fully incorporated under the Ethiopian Criminal Code, for instance. However, the Ethiopian Criminal Code has generally incorporated what are called the territorial, protective, active personality, passive personality and universality principles. See Arts. 11-20 of the Criminal Code; see also Philippe Graven, *Introduction to Ethiopian Penal Law (Arts. 1-84 Penal Code)*, Faculty of Law, HSIU, 1965, pp. 34-42[hereinafter Graven].

[28] Article 7 of the Hague Convention reads: "The contracting state 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. Those authorities shall take their decisions in the same manner as in the case of any ordinary offence of a serious nature under the law of that state" (emphasis added).

[29] Joyner, *supra* note 11, p. 196.

not have entered into extradition treaty of any nature. In addition, contracting states assume international obligation to include the crime of hijacking as an extraditable offence in every extradition treaty to be concluded between them. Moreover, hijacking is mandatorily read into any extradition treaty to be entered between two or more contracting states. Accordingly, hijacking is an extraditable offense should there exist an extradition treaty – which must not necessarily and expressly make hijacking an extraditable offense – between or among parties to the Convention.

By virtue of sub-articles 3 and 4 of the same article, contracting states that do not subject extradition to the existence of a treaty must, subject however to the conditions provided by their law, recognize the offence as an extraditable offence between themselves. It is also provided that the offence be treated, for the purpose of extradition between contracting states, as if it had been committed not only in the place in which it occurred but also in the territories of the states required to establish their jurisdiction in accordance with Article 4(1).

Despite these laudatory facets of Article 8, there is an important omission regarding the two non-extradition exceptions, nationals of the requested state[30] and "political offenders"[31]– both of which usually feature in bilateral treaties. Studies also show that the otherwise detailed and praiseworthy provisions (of the Hague Convention) on extradition of hijacker, this has not been fully materialized. Extradition has been grossly underused in jurisdictional settlements, whereas the legal antithesis – asylum –has been too

[30] National constitutions provide that no citizen of a state concerned shall be extradited to a foreign country. For instance, the Basic Law of the Federal Republic of Germany (as amended by the Unification Treaty of 31 August 1990 and Federal Statute of 23 September 1990) in its Article 16(2) provides that "no German may be extradited to a foreign country". Similarly, Article 50 of the 1955 Revised Constitution of Ethiopia stated that "no Ethiopian subject might be extradited to a foreign country" although he/she might be extradited in accordance with international agreements to which Ethiopia was a party. Also, the 1987 People`s Democratic Republic of Ethiopian Constitution (Article 32(2)) prohibited the extradition of Ethiopian nationals without any exception. In contradistinction to its predecessors, the 1995 FDRE Constitution is silent whether or not Ethiopian nationals may be extradited to foreign countries. Yet, the Criminal Code prohibits extradition of nationals. Article 21(2) states that "no Ethiopian national having that status at the time of the commission of the crime or at the time of the request for his extradition may be handed over to a foreign country though he shall be tried by Ethiopian courts under Ethiopian law."

[31] Joyner, *supra* note 11, p. 199.

often the case.[32] Therefore, the asylum phenomenon constitutes the most formidable obstacle hindering total prosecution of alleged offenders and thus reduces the international efficacy of the convention to suppress illegal aircraft seizure and attempts thereof.[33]

2. Criminal Jurisdiction of Contracting States over Hijackers under the Hague Convention

2.1 Introduction to Criminal Jurisdiction of States under International Law

Though the primary focus in this article is not on criminal jurisdiction of states under international law in its wider sense, a brief reflection on the subject provides a context to the main thesis, i.e., criminal jurisdiction of states over hijackers of aircraft under the Hague Convention.

The term jurisdiction is very technical and susceptible to different meanings in different circumstances.[34] For instance, Malcolm N. Shaw expounds that "jurisdiction concerns the power of a state to affect people, property and circumstances and reflects the basic principles of state sovereignty, equality of states and non-interference in domestic affairs."[35] Ian Brownlie posits "jurisdiction refers to particular aspects of the general legal competence of states often referred to as sovereignty."[36] Jurisdiction in international law, according to Bassiouni, refers to "two aspects of the authoritative decision making, the first is rule making and the second is rule enforcing."[37]

Within the context of international law, criminal jurisdiction pertains to the jurisdiction of the judiciary of a given state to try cases in which a foreign factor is involved.[38] As a rule, international law does not obligate states to assume jurisdiction. More often than not, rules of international law consist of prohibitions. If, for example, a municipal court, not complying with these

---

[32] *Ibid*.
[33] *Id*, p. 200.
[34] Malanczuk, P., A*kehurst's Modern Introduction to International Law*, Routledge, London, 7th Revised edition, New York, 1997, p.109.
[35] Shaw, M., *International Law*, Cambridge University Press, Cambridge, 4th edition, 1997, p.452 [hereinafter Shaw].
[36] Brownlie, I., *Principles of Public International Law*, Clarendon Press, Oxford, 2nd edition, 1973, P.291 [hereinafter Brownlie].
[37] Bassiouni, M., *International Extradition and World Public Order*, Oceana Publication, New York, 1974, p.202 [hereinafter Bassiouni].
[38] Shaw, *supra* note 35, p.457.

prohibitions, exercises jurisdiction it may be held liable internationally to the national state of the individual who is adversely affected by the decision of that state, notwithstanding the decision is fair or just.

That said, it must be noted that international law neither forbids nor requires municipal courts to assume jurisdiction; it makes, of course, an offer of jurisdiction which may be rejected by municipal courts whenever they deem the same unnecessary.[39] But as discussed later on, this is not the case under international conventions incorporating the principle *aut dedere aut judicare – prosecute or extradite*. Therefore, if a country is unwilling to extradite a certain offender, it is under obligation to prosecute him. Again, without prejudice to the above exception, the jurisdiction of municipal courts is determined principally by municipal laws while, in this case, the role of international law is confined to putting few limitations on the discretion of states.[40]

Below, the various principles of criminal jurisdiction of states in international law are explained. There are five theories or principles of criminal jurisdiction recognized by international law. The principles, which do not enjoy the same degree of recognition, includes: the territorial principle, the active personality principle, the passive personality principle, the protective principle and universality principle.[41]

1.1.1. The Territorial Principle

The territoriality principle is a manifestation of sovereignty exercisable by a given state within its territory and is the basic foundation for the application of legal rights of a state. The fact that a country should be able to prosecute for offences committed within its territory is concomitant to responsibility for the enforcement of law and the maintenance of good order within that state. In short, this principle of criminal jurisdiction is founded upon the tenets of sovereignty and equality of states. All states thus adhere to this principle.[42] It must however be borne in mind that although criminal jurisdiction is principally and predominately territorial, territorial jurisdiction is not exclusive. States are at liberty to consent to the limitation of their

[39] Malanczuk, *supra* note 34,110.
[40] *Ibid*.
[41] Bassiouni, *supra* note 37, pp. 204-205.
[42] *Id*, p.206

territorial jurisdiction and therefore they may enter into arrangements whereby jurisdiction is exercised within or outside the national territory.[43]

2.1.2. The Active Personality Principle

It is widely acknowledged that nationals of a state are entitled to a state's protection even when they are outside the territorial limits of a state. A national, on his part, has a corresponding obligation to obey those national laws which are recognized as having an extra-territorial effect. [44] A state may enforce its penal laws against its nationals even when the conduct charged as criminal was committed in a foreign jurisdiction. And, international law does not prohibit such exercise of jurisdiction.[45]

Countries which belong to the continental legal system are examples of jurisdictions where the active personality principle applies. A case entertained by the Swedish Supreme Court illustrates the application of the principle. The accused, a Swedish national, was involved in a road traffic accident in the Federal Republic of Germany. One of his defenses, when prosecuted in Sweden, was that the traffic code had not been intended to apply outside Swedish territory. The Supreme Court held that every crime committed by a Swedish citizen may be punished even if committed abroad.[46]

In contradistinction to the civil law countries, common law countries exercise criminal jurisdiction over their nationals abroad only when the crimes committed are very serious as defined by their domestic laws. The English courts, for instance, generally limit such claims to treason, murder and bigamy.[47]

2.1.3. The Passive Personality Principle

This principle is considered to be the complement of the active personality principle. While the active personality principle ensures nationals of a state who have committed offences aboard will be brought to justice, the passive personality principle ensures that a state's interest in the welfare of its nationals abroad will be protected. According to M. Cherif Bassiouni, this principle has been accepted since the ultimate welfare of a state itself depends

---

[43] Shaw, *supra* note 35, p .462.
[44] Bassiouni, *supra* note 37, p.251.
[45] *Id*, p.252.
[46] Gilbert, G., *Aspects of Extradition Law*, Martinus Nijhoff Publisher, Dordrecht, 1991, p.43.
[47] Shaw, *supra* note 35, p.466.

upon the welfare of its nationals, it can be asserted that a state has a legitimate interest in punishing those who have been guilty of committing crimes against its nationals while aboard.[48]

When Adolf Eichmann, a Nazi war criminal, was prosecuted by Israel under Israeli law, the district court of Jerusalem asserted jurisdiction based on this principle. In justifying its assumption of jurisdiction over Eichmann, who committed crimes against the Jewish people, the court stated that given the link between the Jewish people and Israel was evident, Eichmann's crime against these people gave the court jurisdiction to try the case.[49] Although the overall opinion has been that the passive personality principle is dubious in its nature, numerous states enacted statutes incorporating it.[50]

2.1.4. The Protective Principle

This principle posits that states may exercise jurisdiction over aliens who have committed an act out of the territorial jurisdiction of a given state, where the act is detrimental to the security of the state concerned. In the words of Bassiouni, the principle is:

> "in effect, a long arm theory, which allows a state to overreach beyond its physical boundaries to protect its interests from harmful effects, engaged in aboard. The protective theory allows a state to assert jurisdiction over an alien, whether an individual or juridical entity, acting outside the state's territorial boundary but in a manner which threatens significant interests of the state."[51]

Although it is a well entrenched principle, its practical extension and its scope are not clear enough.[52]

2.1.5. The Universality Principle

All the principles discussed so far are applicable to a given situation only where a link between a state claiming jurisdiction over the offences and

---

[48] Bassiouni, *supra* note 37, p.255.
[49] Gilbert, *supra* note 46, p.45.
[50] Shaw, *supra* note 35, p.466.
[51] Bassiouni, *supra* note 37, p.259. Bassiouni has made it clear that this principle is applicable when an individual or a juridical person jeopardizes the significant interests of a state abroad. However the relevant issue is as to what constitutes the significant interests of a state concerned. How do we define the scope of application of the significant interest of the state?
[52] Shaw, *supra* note 35, pp.468-469.

the offense itself, the offender or the victim of the offence exists. In each of these cases, a state justifies its assumption of criminal jurisdiction by alleging, for instance, that a given conduct has affected its or the interests of its national or its national has affected the interests of other individuals outside the state in some way.

The universality principle, however, rests on a different rationale. Owing to their nature, some offences affect the interests of all states irrespective of the locus of the crime and against which state they are committed. Moreover, offences may be committed in an area which is not under the exclusive jurisdiction of a given state such as on the high seas, the airs pace or the outer space. Such crimes are crimes against mankind and are called *delict jus gentium*.[53] Hence, any state may, if it captures the offender, prosecute and punish the offender on behalf of the international community. In effect, the universality principle of criminal jurisdiction allows all states of the globe to protect the universal values and interest of mankind.[54] The universal jurisdiction is established by customary international law and by conventions.[55]

2.2. Criminal Jurisdiction of States under the Hague Convention

2.2.1. General Remarks

As seen earlier,[56] Article 4 of The Hague Convention governs the assumption of jurisdiction over the crime of hijacking. Instead of declaring the competence of the states enumerated therein over the offence of hijacking, the article merely states that each contracting state *shall take such measures as may be necessary to establish its jurisdiction.* Therefore, it may be asked: does the wording of the provision commits contracting states to only take certain measures to establish their jurisdiction, enacting legislation without exercising jurisdiction? Put in other words, does the obligation under Article 4 include

[53] *Id*, pp. 262-263. Generally, these crimes are called international crimes. According to Shaw, piracy and war crimes are typical examples of international crimes in which case the offenders are to be arrested and punished by any state in the world. According to this author, some conventions establish what might be termed as quasi-universal jurisdiction such as the crime of hijacking of aircraft.

[54] Gilbert, *supra* note 46, p.46.

[55] *Ibid*.

[56] See the discussion under 1.3 above.

both the establishment of the basis for jurisdiction and the exercise of the same?

The jurisdiction of a state is its competence under international law to prosecute and punish for crime which has three aspects; executive jurisdiction, legislative jurisdiction and judicial jurisdiction.[57] It may be understood that taking measures necessary to establish jurisdiction of a state, in the sense of enacting legislation over certain offences, is one aspect of the notion of jurisdiction under international law. Yet, if the provisions of Article 4 are to be construed as simply obligating contracting states to take certain measures pertaining to jurisdiction without exercising it, then a contracting state enacting legislation making hijacking a crime, but refusing to enforce its legislation, would be fulfilling its contractual obligations under the convention. This proposition appears valid since the wording of the provision requires no more than taking measures by a contracting state to establish its jurisdiction over the crime of hijacking.

On the other hand, it can be argued that, although its wording is not absolutely clear, Article 4(1) of the Convention intends to confer complete jurisdiction to states – that is to say, each contracting party state shall take measures necessary to establish its legislative, executive and judicial jurisdiction. This construction can be substantiated by Article 2 of the Convention under which contracting states expressly undertake to exercise their legislative jurisdiction in a certain manner i.e., making hijacking punishable by severe penalties. Furthermore, as per Article 7 of the Convention, a contracting state in whose territory a hijacker is found is obliged to submit his case to its competent authorities for the purpose of prosecution. Thus, a contracting state is duty bound to bring the executive and judicial aspects of jurisdiction into operation.[58] It should also be borne in mind that the preamble to the convention speaks of the *urgent need to provide appropriate measures for the punishment of offenders*.[59] Therefore, it is safe

[57] Shubber, S., 'Aircraft Hijacking under the Hague Convention: A New Regime?' *International and Comparative Law Quarterly*, Vol. 22, 1973, p.706. In addition, see Malanczuk *supra* note 34, p.109; Shaw, *supra* note 35, P. 452.

[58] Of course, the criminal justice system of countries in the world brings the three branches of the government into play. The law-maker prescribes rules and procedures regarding crimes. The executive branch arrests, investigates and prosecutes offenders using the rules and procedures set forth by the law-maker. The judiciary tries and punishes the offenders using the laws passed by the law maker.

[59] See the preamble of the Hague Convention, *supra* note 5.

to conclude that contracting states undertook under Article 4 not only to take measures to establish their jurisdiction, but to exercise it under the regime of the Convention as well.[60] Hence, the argument that the obligation of a contracting state ends once it has taken measures to establish its jurisdiction without exercising it must be refuted.

That said, criminal jurisdiction under the Convention may be assumed based on the grounds discussed herein below.

2.2.2. The State of Registration of the Aircraft [61]

By virtue of Article 4(1) of the Hague Convention, the state of registration of the aircraft has the power to exercise jurisdiction over the crime of hijacking committed on board aircraft of its nationality wherever it is committed. This power extends to enacting legislation against hijacking, arresting hijackers and putting them on trial if they hijack aircraft registered in that state. It can also take certain measures to prevent a hijacked aircraft from taking off by blocking the runaway or disabling the aircraft itself. It can also send its fighter aircraft to intercept a hijacked aircraft and force it to land.

The Hague Convention also deals with aircrafts which are subject to joint or international registration when such aircraft are operated by joint air transport operating organizations or internationally operating agencies. In these cases, the contracting states concerned shall designate for each aircraft the state (among them) that has the attributes of the state of registration and hence that exercises jurisdiction for the purpose of the Convention.[62] This is a useful device for avoiding any vacuum in the field of jurisdiction.

2.2.3. The State Where the Aircraft Lands with the Hijacker

A contracting state, on whose territory a hijacked aircraft lands with hijacker still on board, is competent to exercise criminal jurisdiction over the

---

[60] Shubber, *supra* note 57, p. 707.

[61] This reflects the active personality principle (discussed in 2.1.2) which is a declaratory of customary international law. Under customary international law, states can claim jurisdiction vis-à-vis ships, aircraft and persons bearing their nationality. Ethiopian laws incorporate this principle; see, e.g., Articles 14, 15(1) and 18(1), Criminal Code and Article 104, Criminal Procedure Code of the Empire of Ethiopia, 1961, *Negarit Gazeta*, Proclamation No. 185/1961, Extraordinary Issue No. 1 of 1961 [hereinafter Criminal Procedure Code] .

[62] Article 5, Hague Convention, *supra* note 5.

offender.[63] This contracting state has the power to arrest, try and imprison the hijacker irrespective of whether or not the hijacking occurred in its airspace. Needless to say, there is no need of granting such right to the landing state, if the offence is committed in its airspace, because, the state has well-founded criminal jurisdiction under the territorial principle.[64] But it is interesting to note that the principle under consideration extends the competence of states over hijacking occurring without the territorial limits of such a state and without any apparent link between the offence and the state, except for the landing in its territory.

2.2.4. The State Where the Charterer of Aircraft has his Principal Place of Business or Permanent Residence

The Convention effectively regulates the question of jurisdiction over the hijacking of aircraft registered in one country and leased to another country. Article 4 paragraph 1(c) of the Convention empowers the state where a charterer (lessee) of an aircraft has his principal business or his permanent residence to exercise jurisdiction over a hijacker of such aircraft. The provision puts such state on the same footing as the state of registration of the aircraft or the state of landing.

Nonetheless, the provision under consideration seems to apply only to physical persons who have leased an aircraft from the state of registration – it states "*his principal place of business or permanent residence*." In the opinion of this author, limiting the scope of application of this provision only to lessees/charterers of physical persons does not seem to be acceptable. This is because a juridical person can lease an aircraft without crew. Incidentally, the state of registration or incorporation of the juridical person may be taken as the permanent residence of the juridical person while the principal place of business is the place where such person is carrying on major business activities.

From the foregoing, it is clear that the state where the charterer of an aircraft has his principal place of business or his permanent residence has the power, for example, to arrest, investigate and try a hijacker or a person who attempts to hijack that aircraft, *whether* the offence of attempt is committed in the airspace of that state or outside it. In case where the crime is committed or

---

[63] *Ibid*, Article 4(1)(b).

[64] Amato, A., *International Law Studies: Collected Papers*, Kluwer Law International, The Hague, 1997, Vol. II, pp.187.

attempted in the air space of that state, the right to exercise jurisdiction could be based on the territorial principle. On the contrary, if however the crime is committed or attempted in the air space of another state, then a new situation is created by the convention, as formerly no such basis of exercise of jurisdiction can be said to exit.[65]

2.2.5. The State Where the Hijacker is found

A state party to the Convention in whose territory a hijacker is found has the power and responsibility to exercise criminal jurisdiction over him by virtue of Article 4(2) of the Convention. The principle laid down in this provision may be regarded as novel in the sphere of extra-territorial jurisdiction under international law[66] as there seems to be no connection between the offence of hijacking, the offender, the hijacked aircraft and the state entitled to exercise jurisdiction. The only situation that serves as the basis of criminal jurisdiction of such state is the presence of the offender in the territory of that state. The offence can be committed by a foreign national, against a foreign aircraft, in the airspace of a foreign state or over the high seas, and yet the mere presence of the offender in a contracting state after the commission of the crime of hijacking entitles the latter to exercise jurisdiction over him. One may however argue that the exercise of jurisdiction would be based on the nationality principle for Article 4(2) applies to nationals of the state referred therein, where they return to their national states after hijacking foreign aircraft in foreign territories.[67]

The rationale behind according criminal jurisdiction to the state where the hijacker is found is meant to close possible gaps in jurisdiction through which hijackers may escape punishment since it gives as many parties to the convention as possible the power to exercise jurisdiction over the offence of hijacking with the ultimate aim of deterring hijackers.[68] This reinforces the purpose of the convention as expressed in its preamble: *the state parties to this convention, for the purpose of deterring unlawful act of seizure or*

[65] See Shubber, *supra* note 57, p.750
[66] *Ibid.*
[67] This is also in line with the active personality principle discussed above, a principle which posits that nationals have the duty to obey national laws which are recognized as having extra-territorial effect.
[68] See Shubber, *supra* note 57, p. 713.

exercise of control of aircraft in flight, [must] provide appropriate measures for punishment of offenders.[69]

2.3. Conflict of Jurisdiction among Contracting States over Hijackers

From the foregoing, it must be clear that the state of registration, the state of landing of the aircraft with the hijacker, the state where the hijacker is found and the state of the operator of the aircraft when it is on lease have the power to exercise criminal jurisdiction over a hijacker of air craft. The problem, however, is numerous states may assume jurisdiction simultaneously. Suppose that a commercial aircraft registered in State A is leased to an airline operating in State B. The same aircraft is hijacked to State C with the hijacker still on board. Assuming that all the three states are parties to the Hague Convention, all of them have the power to assume jurisdiction over the hijacker. Even more, any contracting state where the hijacker is found has jurisdiction.

The Convention does not contain rules on conflict of jurisdiction. So, how can such conflict of jurisdiction be resolved in case all or some of the countries enumerated above claim jurisdiction and fail to reach agreement by themselves? Yoram Dinstein, Professor of International Law from Tel-Aviv University, argues:

> "Not all [contracting] states have equal rights and duties [with respect to jurisdiction]. There are three states spelled out in the first section of Art.4, which enjoy a favored status inasmuch as they can exercise their rights unconditionally. The three preferred states are: the state of registration, the state of the operator of the aircraft when it is under lease and the state where the aircraft lands with the hijacker."[70]

As to the "first preferred state", the above author posits that in so far as the crime of hijacking is concerned, in many instances and in many ways, the offence will cause the gravest harm to the state of registration. With regard to the "second preferred state", this state, he maintains, is preferred to be the second, depending on quasi-territorial power. As regards the "third preferred state", he argues that there is no doubt that such a state should have jurisdiction if the offender is going to end up there and will not be extradited to the state of registration or to that of the operator.[71]

---

[69] See the preamble of the Hague Convention, *supra* note 5.

[70] Dinstein, Y., 'Criminal Jurisdiction over Aircraft Hijacking', *Israel Law Review*, 1972, Vol. 10, No.2, p.201.

[71] *Ibid.*

However, there are counter argument to Dinstein's proposition. It can be safely maintained that the structure set up under Article 4 of the Convention clearly shows that the state of landing is on equal footing with the state of registration and the state of the operator. In this regard, Feller, Professor of Criminal Law from Hebrew University of Jerusalem, posits:

> "A pre-determined scale of priories with regard to jurisdiction means that the jurisdiction of the less preferred states is excluded by the jurisdiction of the state to which the higher preference has been granted according to that scale. While the absence of universal jurisdiction in relation to a given offence means that, if a particular state has no jurisdiction either on the basis of territoriality, protective principle, or nationality whether active or passive, it will not be authorized to put the offender on trial even if he is found within the territorial boundaries of the state."[72]

In view of that, an international agreement on the above basis would involve a duty, on the part of each contracting state to extradite an offender, who is present in its territory to the state to which priority is given. In the absence of jurisdiction according to one of the above principles and if an application for extradition made by a state entitled to jurisdiction in accordance with the scale of preference, the offender would not be brought to justice in the state in which he is found. But this does not seem to be the spirit and the purpose of the convention as a contracting state in which the offender is found is entitled to exercise jurisdiction unless it extradites him to some other state claiming jurisdiction.[73]

Therefore, according to the stance taken by Feller, it is not possible, in the absence of any specific provision in this regard, to deduce from the order in which the two sub-articles of article 4 of the Convention appear that there is order of preference among states referred to therein.[74] The writer of this article is also of the opinion that the argument of Dinstein is unconvincing.

To sum up, The Hague Convention which establishes wide range of jurisdictions leaves the question of conflict of criminal jurisdiction among contracting states unanswered. Given however that its ultimate purpose is punishing hijackers and thereby deterring the crime of hijacking, hijackers must not be let escape punishment whenever there is conflict of jurisdiction

---

[72] Feller, S., 'Comment on Criminal Jurisdiction over Aircraft Hijacking', *Israel Law Review*, Vol.19, No.2, 1972, p.307.
[73] *Ibid.*
[74] *Ibid.*

among contracting states. In the opinion of this writer, the most acceptable recourse whenever contracting states do not reach agreement over conflict of criminal jurisdiction among them would be submitting their dispute to arbitration as per Article12 of the Convention.[75]

2.4. The Prosecute-or-Extradite Obligation of Contracting States: *Aut Dedere Aut Judicare* Principle

The expressions prosecute-or- extradite or *aut dedere aut judicare* is commonly used to refer to the alternative obligation to prosecute or extradite offenders. This principle is contained in a number of multilateral treaties that aim at securing international cooperation in the suppression of certain kinds of criminal conduct. Though the obligation is phrased in different ways in different treaties, it basically requires a state (a party to the multi-lateral convention) which has hold of someone who has committed a crime of international concern, either to extradite him or else to take steps to have him prosecuted before its own courts.[76] This formula is used under the Hague Convention which requires the state in which an alleged offender is found either to extradite him to a state which has jurisdiction or alternatively, if it does not extradite him, to submit the case to its competent authorities for the purpose of persecution. Below, these alternative obligations of contracting parties under the Hague Convention are discussed in turn.

2.4.1. The Obligation to Prosecute Hijackers

Incorporated in Article 7, the obligation to prosecute hijackers is taken as the strength of the Hague Convention. This obligation is a mandatory obligation except that it can, alternatively, be compensated by extradition obligation. Article 7 does not subordinate the duty to prosecute to parties' existing laws regarding extra-territorial jurisdiction.

---

[75] Art. 12(1) of the Hague Convention provides that "any dispute between two or more contracting states concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of request for arbitration the parties are unable to agree on the organization of the arbitration, any of the parties may refer the dispute to the International Court of Justice by request in conformity with the statute of the Court."

[76] Bassiouni M. & Wise, E., *Aut Dedere Aut Judicare: the Duty to Extradite or Prosecute in International law*, Kluwer Law International, the Hague, 1995, p.3.

The obligation to prosecute is not an absolute obligation; neither is extradition. These are only alternative obligations. If a country is willing and able to prosecute a hijacker, it is not obliged to extradite. Bassiouni and Wise notes:

> "The wording of Art.7 was a compromise worked out at last moment during the negotiation which produced the Hague Convention. Those who drafted the convention sought, as far as possible, to deny a haven to aircraft hijackers. One way to do so might have been to impose an absolute obligation to extradite offenders to the state of registry of the aircraft. This was proposed but rejected, since it would potentially require extradition of nationals and also foreclose the possibility of political asylum in cases in which it might be thought appropriate. *Efforts, therefore, centered on imposing an obligation to prosecute when extradition is refused.*"[77](Emphasis added)

Furthermore, it must be borne in mind that Art.7 of the Hague Convention, by introducing the prosecute-or-extradite obligation, is binding on all contracting parties regardless of the location of the offence. This means that this provision is aimed at denying sanctuary to alleged offenders.[78] But, whether states are duty-bound to prosecute any hijacker irrespective of the motive of the hijacking appears unclear. In this regard, it is maintained that:

> "the Hague Convention embodies a mature legal evolution of international efforts to deter unlawful aircraft seizure. Even so, it is seriously incapacitated by the universally sanctioned municipal right of providing safe haven for offenders under select circumstances."[79]

As noted above, if contracting states are not willing to extradite hijackers to other states, they have to prosecute the offenders "without exception whatsoever". Moreover, when contracting states opt for prosecution of a hijacker, they are obligated to make hijacking punishable by severe penalties.[80] Yet, what is meant by "severe" penalties is not defined anywhere in the Convention and thus its determination is totally left to the discretion of each contracting state.[81] Incidentally, states are not prohibited to give asylum to hijackers regardless of the motive of hijacking.

---

[77] *Id*, p.16

[78] Joyner, *supra* note 11, p.196.

[79] *Id*, p.200.

[80] Hague Convention, *supra* note 5, Article 2.

[81] Lissitzn, O., 'International Control of Aerial Hijacking: The Role of Values and Interests,' *American Journal of International Law*, Vol.65, No.4, 1971, p.83. That international

2.4.2. Extradition of Hijackers

Extradition is a formal process through which a person is surrendered by one state to another by virtue of a treaty, reciprocity or comity as between the respective states.[82] According to O 'Connell, a renowned publicist on international law, extradition pertains to "the surrender by one nation to another of an individual accused or convicted of an offender, outside of its territory, and within the territorial jurisdiction of the other, which, being competent to try and punish him, demands the surrender."[83] The process of extradition is not a recent phenomenon. It is a legal process which dates back to the earliest civilization. Extradition, throughout history, has remained a system consisting of several processes where sovereign surrenders, to another, a person sought after as an accused criminal or a fugitive offender.[84]

Extradition, whether executed by treaty, reciprocity or comity, is premised on the assumption that the interest of a given state has been affected by the conduct of a given offender who is not within the state's jurisdiction but within the jurisdiction of another state. This assumption presupposes that the interest of the requesting state has been affected in such a manner that it seeks to subject the offender in question to its jurisdictional authority and the state wherein the individual sought after is located has no greater interest in that person. Consequently, the requested state will not tend to shield that person from the jurisdictional control of the requesting state by denying extradition request.[85] The first substantive aspect of extradition is, therefore, the requesting state's jurisdiction over the subject matter for which extradition of the alleged offender is sought. Unless this is met by the requesting state, the state of refuge which has jurisdictional control over the offender may not entertain an extradition request.

---

standard of severity is not well defined can easily be observed from the difference, from jurisdiction to jurisdiction, in the punishment for the offense of hijacking. For instance, the 1970 Code Penal of France makes hijacking of aircraft punishable with a term of 5 years to 10 years imprisonment; and if such act results in injury or death, the punishment is from 10 to 20 years of life imprisonment; the 1973 former U.S.S.R Law on hijacking provided a punishment of 3 to 10 years. Article 507(1) of the FDRE Criminal Code provides that hijacking is punishable with rigorous imprisonment from 15 to 25 years.

[82] Bassiouni, *supra* note 37, pp. 200.

[83] O'Connell, D., *International Law*, 2nd ed., Vol. II, Stevens & Sons, London, 1970, p.720.

[84] Bassiouni, *supra* note 37, pp. 200.

[85] *Ibid*, p.202.

Coming to extradition of hijackers under the Hague Convention, if a country does not prosecute a hijacker, it is under obligation to extradite him to another state which claims jurisdiction over the hijacker. Article 8, which regulates extradition of hijackers, may be considered as important contributions in the fight against hijacking of aircraft. Prior to the coming of the Hague Convention, the lack of extradition treaties between states where the hijackers take refuge and the states requesting their extradition was used as a basis for refusal to extradite hijackers.[86] The Convention however declares the offence of hijacking as an *extraditable offence* and states party to the convention undertook to treat it as an *ordinary offence of a serious nature* for the purpose of extradition. These features of the convention are new additions to the principles of jurisdiction which already existed under customary international law or treaties.

Under Article 8(1) of the Convention, contracting parties undertake to consider hijacking of aircraft as an offence the perpetrator of which can be extradited. Moreover, it is agreed that this concept of extraditability is read into existing extradition treaties as well as those to be concluded in the future. With regard to the former, states parties to the convention are expressly committed to include hijacking as an extraditable offence in existing treaties. In effect, this means that existing extradition treaties between contracting parties have been automatically amended by the provision concerning the amendment of existing extradition treaties between contracting states.[87] Similarly, where two states parties to the convention conclude an extradition treaty between them without the later containing any provision declaring hijacking of aircraft an extraditable offence, this notion of extraditability will be read into it.

If a contracting state, which makes extradition conditional on the existence of a treaty, receives a request for extradition from another contracting state with which it has not extradition treaty, it may at its option consider this convention as the legal basis for extradition in respect of the offence. By virtue of Article 8(2), a contracting party, which requires the existence of an extradition treaty between itself and the requesting state, can consider the Hague Convention as a treaty for purpose of extraditing hijackers. Furthermore, under Article 8(3) contracting states which do not make extradition conditional on the existence of a treaty must recognize the

[86] Shubber, *supra* note 57, p. 725.
[87] Gilbert, *supra* note 46, P. 43.

offence as an extraditable offence between themselves subject to the conditions provided by the law of the requested state. This tantamount to creating a multilateral (international instrument) for the extradition of hijackers of aircraft among the parties to The Hague Convention with the reservation that the conditions laid down by national laws should be complied with.[88]

Finally, Article 8(4) of the Hague Convention sets forth that the offence of hijacking shall be treated, for the purpose of extradition between contracting states, as if it had been committed not only in the place in which it occurred but also in the territories of the states required to establish their jurisdiction in accordance with Article 4(1).

2.4.3. Questions Concomitant to the Prosecute-or-Extradite Obligation

Now, it is clear that the "prosecute-or-extradite" obligation is an alternative obligation. Despite that, a close scrutiny of Article 8 leaves the following conspicuous questions arising in relation to these alternative obligations:

1. What is the order, if any, according to which extradition of hijackers may be carried out?
2. Is it possible to extradite national hijackers of the requested state under the Convention?
3. If a country does not accept extradition request, is it always under obligation to prosecute the hijacker irrespective of the motive of the hijacking?

As regards the first question, it is already seen that the Hague Convention fails to design any viable mechanism which can be used to resolve disputes regarding conflict of criminal jurisdiction between or among contracting states. The absence of such mechanisms may also lead to conflict between or among contracting states in the case of extradition too. This is because more than one state having criminal jurisdiction may request the extradition of a hijacker and the requested state may – if it does not have the desire to prosecute the alleged offender – be in trouble to choose the appropriate state. There is no clear cut solution to avoid the conflict. Yet, it may be that either the requested state may have its own standards to which requesting state must adhere to to surrender the hijacker. In this regard, the requested state may take into account such factors as availability of evidence,

[88] Shubber, *supra* note 57, p.725.

competence of the forum of the requesting sate, presence of adequate and effective mechanisms to ensure fair trial of the offender and the country whose interest is affected most by the perpetrator.

Concerning the second question, civil law countries do not usually extradite their own nationals while common law countries have not adopted such a restrictive approach, although, in certain specific cases, a discretionary clause to that end is included in extradition arrangements.[89] The rationale for refusal of extradition of nationals rests on the assumption that national of the requested state is likely to receive ill treatment or an unfair trial in the hands of the requesting state.[90] Though exemptions of nationals from extradition are usually embodied in extradition treaties, there is no indication in the Hague Convention so far as the extradition of nationals of the requested state is concerned. The only mention of the offender occurs in Article 7, without any qualification. Therefore, it may be argued that a state party to the convention which receives extradition request of its own national may grant extradition provided that it is compatible to its national law. This means that if the extradition of nationals is not compatible to its national law, it cannot be obliged to extradite its national given the optional nature of extradition under the Convention.

The third question has a lot to do with the political offence exception to extradition and prosecution which has remained a standard clause in almost all extradition treaties and some municipal laws. Although widely recognized, the term political offence is not defined in treaties, domestic legislation, extradition laws or uniform state practices. On account of this, judicial interpretations have been the principal sources for its significance and application.[91] In one case, it was maintained that:

> "for an offence to be considered as political offence (for the purpose of extradition proceedings) it must at least be shown that the act is done in furtherance of, (done with the intention of assistance, as a sort of overt act in the course of acting in a political manner), political rising, or dispute between two parties in the state as to which is to have the government in its hands."[92]

---

[89] Gilbert, *supra* note 46, p.95.
[90] For more, see *supra* note 30 and the accompanying texts.
[91] Bassiouni, *supra* note 37, p. 371.
[92] Green, L., 'Extradition versus Asylum for Aerial Hijackers,' *Israel Law Review*, 1975, Vol. 10, No.2, p.217.

Another court decision expounded that:

> "for an offence to constitute an offence of a political character there must be two or more parties in the state, each seeking to impose the government of their own choice on the other, and that, if the offence is committed by one side or other in pursuance of that object, it is a political offence, otherwise not"[93]

The above judicial explanations, Green asserts, reflect the 19th century view of democracy with political systems organized on the basis of reputable parties, with one in power and another seeking to overthrow it and take over the reins of government for itself. But it must not be thought, the same author argues, that this view of political life is no longer acceptable by judicial tribunals even at present.[94]

One more point, the Chilean Supreme Court in 1957 held that a political offence, according to generally accepted principle, is one involving any attempt against the political organization of a state or the political rights of citizens, that is, an attack upon the constitutional order of the country concerned.[95]

Though the term eludes precise definition, the above explanation is believed to elucidate as to what constitutes a political offence. Finally, it must be answered why political offence is usually excluded from extradition or prosecution. The reason for the political offence exception rests in part upon the asylum states' human treatment and belief in human rights and personal and political freedom. Put in other words, extradition is denied since political crimes affect the sensitive interest of a given government, and therefore inspire a passionately hostile atmosphere which jeopardizes an ordinary and fair trial in the country to which the offender is extradited.[96]

---

[93] *Ibid*.
[94] *Id*, p.218.
[95] *Ibid*.
[96] See generally, Bassiouni, *supra* note 37.

3. An Overview of Criminal Jurisdiction over Hijackers in Ethiopia

3.1. Introductory Remarks

Ethiopia has been a federal country *de jure* since 1994.[97] Accordingly, there is division of power between the Federal Government and the Federating Units.[98] The division of power pertains to legislative, executive and judicial power.[99] At the federal level, the House of Peoples' Representatives, the Prime Minister and his Council of Ministers, and the Federal courts exercise legislative, executive and judicial authority, respectively.[100] The regional states exercise their executive, legislative, and judicial authority through the Regional Administration, State Council, and the Regional Judiciary.[101]

The federal legislative organ is empowered to enact laws in matters assigned to the Federal Government by the Constitution.[102] And, the power to enact criminal code is vested in the Federal Parliament although states may enact penal laws on matters that are not specifically covered by federal penal legislation.[103] For the first time in Ethiopia's legal history, hijacking of aircraft is expressly criminalized under a 1996 federal law.[104] The law, meant to punish aircraft seizures and sabotages against the safety of aviation, was apparently a restatement of The 1970 Hague Convention and the 1971

[97] Although historic Ethiopia was a *de facto* federal state, it has become a federal state *de jure* as of 1994 when the current constitution was adopted. The constitution establishes a Federal and Democratic state structure. And, the Ethiopian is formally known as the Federal Democratic Republic of Ethiopia; see Article 1, FDRE Constitution, *supra* note 7, also, Assefa Fisseha, *Federalism and the Accommodation of Diversity*, Wolf Legal Publisher, Nijmegen, 2005 [hereinafter Assefa], pp.11-22; Solomon Nigussie, 'Ethiopia's Fiscal Federalism: A Constitutional Overviews', in Assefa Fiseha & Getachew Assefa (eds.), *Institutionalizing Constitutionalism and Rule of Law: Towards a Constitutional Practice in Ethiopia*, _(Ethiopian Constitutional Law Series, Vol.3), Faculty of Law, Addis Ababa University, 2009, p.84.

[98] See Assefa, *supra* note 97, pp.382-422.

[99] Article 50, FDRE Constitution.

[100] Assefa, *supra* note 97, pp.382-422.

[101] *Ibid*.

[102] Article 55(1), FDRE Constitution.

[103] *Id*.

[104] Offences against Civil Aviation Proclamation, 1996, *Federal Negarit Gazeta*, Proclamation No.31/1996, 2nd Year, No.19.

Montreal Convention. In force until replaced[105] by the 2005 Criminal Code, Offenses against the Civil Aviation Proclamation filled the void left by the 1957 Penal Code.[106] Because the crime of hijacking remains to be a serious concern for the Federal Government of Ethiopia, the new Criminal Code gives appropriate emphasis to the offense of hijacking. The Preamble states that the gaps in the 1957 Penal Code in properly dealing with such crimes as the hijacking of aircraft was one of the reasons in adopting the new Criminal Code.[107] Under Article 507 of the Criminal Code, aircraft hijacking is an offense punishable with rigorous imprisonment from fifteen to twenty five years.

3.2. A Cursory Look at the Principles of Criminal Jurisdiction in Ethiopia

The Criminal Code incorporates the five principles of criminal jurisdiction, i.e., the territoriality principle, the protective principle, the active personality principle, the passive personality principle and the universality principle.[108] These principles of criminal jurisdiction of courts are classified into two major categories: principal criminal jurisdictions and subsidiary jurisdictions.[109] The first three principles relate to the principal jurisdictions of the Ethiopian courts. And, the last two, i.e., passive personality and universality principles concern the subsidiary jurisdiction of our courts.[110]

---

[105] In fact, the major aspects of the 1996 Offences against Civil Aviation Proclamation are retained in Articles 505-513, Criminal Code. Also, the Criminal Code does not repeal the proclamation either expressly or tacitly. It thus seems safe to maintain that the proclamation is only made redundant.

[106] The Penal Code of the Empire of Ethiopia, 1957, *Negarit Gazeta*, Proclamation No.158/1957, Extraordinary Issue No.1 of 1957

[107] See Preface, Criminal Code, *supra* note. 7.

[108] Previously, these principles were incorporated in the 1957 Penal Code; see Articles 11-22 of the repealed Penal Code, also Graven, *supra* note 27, pp.34-56. As far as the principles of criminal jurisdictions are concerned, the new Criminal Code has not made any meaningful departures from the 1957 Penal Code. Accordingly, the analysis made by Graven on Articles 11-22 of the 1957 Penal Code is apparently valid as regards Articles 11-22 of the current Criminal Code.

[109] See Graven; *supra* note 27, p. 34.

[110] Sub-section I of section II, Chapter 2, Title I, Book 1 of the general part of the Criminal Code deals with principal principles of criminal jurisdiction. Sub-section II of the same section deals with subsidiary principles of criminal jurisdiction of Ethiopian courts.

Ethiopian courts assume principal jurisdiction having regard to "the place of commission of the offence, or the nature of the offence or the special status of the offender."[111] Whereas, subsidiary jurisdiction is exercised "only where either the crime or the criminal is in some way connected with Ethiopia."[112] Ethiopian Courts have principal jurisdiction in cases covered under Articles 11, 13 and 15 (2) of the Criminal Code. Under Article 11, Ethiopian courts exercise criminal jurisdiction over any person, whether a national or a foreigner, who has committed any of the crimes specified in the Code on the territory of Ethiopia. Accordingly, aircraft hijacking committed in Ethiopia is subject to criminal jurisdiction of Ethiopian courts, irrespective of the nationality of the offender or the nationality of the aircraft. However, the territoriality principle may not apply regarding offenders enjoying immunities on account of official status sanctioned by public international law.[113] Yet, no Ethiopian national who happens to be a hijacker on the territories of Ethiopia, can invoke immunity as immunity is to be invoked by foreign nationals who are entitled to do so under public international law.

Where an offender, committing a crime on the territories of Ethiopia, takes refuge in a foreign country, his extradition must be requested so that he would be tried under Ethiopian law by Ethiopian courts. Because the Ethiopian Courts exercise principal jurisdiction when a crime is committed on the territories of Ethiopia, the Ethiopian authorities must seek the extradition of the offender to Ethiopia. If the state concerned is a party to the Hague Convention, it is duty-bound either to prosecute the offender or extradite him/her to Ethiopia.[114] However, Ethiopia does not enjoy any power to compel the requested state to surrender the offender to its authorities since the requested state is always at liberty either to prosecute or extradite the criminal.[115] Similarly, where the foreign country where the offender has taken refuge is not a party to the Hague Convention, Ethiopian authorities may still seek the extradition of the hijacker. Should however such state not be obliged

---

[111] Graven, *supra* note 27, p.34

[112] *Ibid.*

[113] Article 11(2), Criminal Code; see also Malanczuk, *supra* note 34, pp.123-129.

[114] Extradition can be accomplished in accordance with bilateral treaties existing between Ethiopia and the requested state. Failing this, it can be accomplished in accordance with Article 8 of the Hague Convention provided that the requested state is a party to the Convention. See discussions under 2.4.2.

[115] As noted earlier, the prosecution or extradition obligation under The Hague Convention is an alternative obligation. See discussions under 2.4.

by other bilateral or multilateral treaty or by reciprocity or by comity, the Ethiopian authorities may request the country of refuge to try the offender by itself. This is, in fact, delegation of criminal jurisdiction of Ethiopian courts to the courts of the country where the offender has taken refuge.

The protective principle of criminal jurisdiction under Article 13 of the Criminal Code permits Ethiopian Courts to exercise principal jurisdiction over offenders who has committed crimes outside Ethiopia against the country, its safety or integrity, its institutions, essential interests or currency. Applied to the crime of hijacking, Ethiopian courts would thus exercise principal criminal jurisdiction over hijackers even if the crime is committed outside Ethiopia where, for instance, the offense is committed against its national flag carriers.

Also, Ethiopian courts exercise principal jurisdiction by virtue of active personality principle under Article 14 and 15 (2), Criminal Code. If a member of the Ethiopian diplomatic or consular service, an Ethiopian official or agent commits crime in a foreign country where he works, he may not be prosecuted in the foreign country on account of international principles of immunity. Yet, he is tried by the Ethiopian Courts where the offense committed is punishable under the Ethiopian Criminal Code and under the law of the country where it was committed. In the case of hijacking, this does not arise as an issue since hijacking of aircraft is anyway a crime punishable with severe penalties in jurisdictions where the Hague convention is in force. Also, countries which are not members to the Convention do not condone the commission of the crime of hijacking since it is a serious threat to their aviation industry and the safety of passengers which entails several economic and political repercussions.

Another instance where Ethiopian courts exercise principal jurisdiction over offenders, through the principle of active personality, involve crimes against international law and especially military crimes as defined under the Ethiopian Criminal Code. As per Article 15(2), the application of this principle is confined only to a member of the defense forces although the crime committed by the defense force may go beyond military crimes. Where a member of the defense forces commits the crime of hijacking abroad, Ethiopian courts may thus exercise principal criminal jurisdiction over the offender provided a civil aircraft is involved; military aircraft is not within the ambit of the Hague Convention.[116]

[116] Article 3, the Hague Convention, *supra* note 5.

The subsidiary application of the Ethiopian Criminal Code is regulated under Articles 17-18. Article 17(1)(a) embodies universality principle of criminal jurisdiction. Accordingly, the Code is applicable to, and hence Ethiopian Courts assume criminal jurisdiction over, an offender, any person who has committed outside Ethiopia a crime against international law or an international crime specified in Ethiopian legislation, or an international treaty to which Ethiopia has adhered. However, because the crime of hijacking has not yet become an international crime punishable by all states,[117] Article 17(1)(a) seems irrelevant[118] to cases involving foreign offenders who hijacked aircrafts abroad. Had the universality principle of criminal jurisdiction been applicable to the crime of hijacking, Ethiopian Courts would have exercised criminal jurisdiction over such offender irrespective of his nationality or the place of the offense.

The subsidiary application of the Ethiopian Criminal Code to any person who has committed a crime outside Ethiopia against an Ethiopian national is prescribed under Article 18. An application of this principle suggests Ethiopian Courts may assume criminal jurisdiction where, for instance, an Ethiopian national onboard an aircraft hijacked by a foreigner in a foreign territory sustains injury. This is so notwithstanding that the offender is a citizen of a state that has not joined the Hague Convention. Note however that Ethiopian courts must not exercise criminal jurisdiction unless the act to be tried, in our case hijacking, is prohibited by the law of Ethiopia and the state where it was committed and is of sufficient gravity under Ethiopian law to justify extradition.

Finally, there is no contradiction between the Hague Convention's and Criminal Code's principles of criminal jurisdiction. The principles incorporated under the Ethiopian Criminal Code are supplementary to the grounds of criminal jurisdiction of states set forth under the Hague Convention. Therefore, Ethiopian courts can assume criminal jurisdictions over hijackers by invoking the Hague Convention without contradicting the relevant provisions of the Ethiopian Criminal Code. Of course, the Convention does not exclude any criminal jurisdiction exercised in

[117] Shaw, *supra* note 35, pp.473-474.

[118] Similarly, Article 17 (1)(b) is not totally applicable to the crime of hijacking as it only concerns crimes against public health or morals as regulated by Articles 525, 599, 635, 640 and 64.

accordance with national law.[119] Where principal jurisdiction is assumed, Ethiopian courts need not extradite hijackers to requesting states. However, Ethiopian courts – where exercising only subsidiary jurisdiction – may be at liberty either to prosecute or extradite the hijacker. According to Article 21 (1) of Criminal Code, any foreigner who commits an ordinary crime outside the territory of Ethiopia and who takes refuge in Ethiopia may be extradited in accordance with the provisions of the law, treaties or international custom.[120] Yet, no Ethiopian national having that status at the time of commission of the crime or at the time of request for his extradition may be handed over to a foreign country; he may thus be tried in Ethiopia.[121]

3.3. Which courts (the Federal Courts or the Regional Courts) are Empowered to Try Hijackers in Ethiopia?

In the current federal set up, judicial power is divided between the federal and the regional courts. Though it is generally stated that federal and state courts assume autonomous judicial authority in their respective jurisdictions, the constitution leaves certain jurisdictional issues unregulated. For instance, the Federal Constitution has not allocated jurisdictions over crimes between the Federal Courts and the regional courts and thus one cannot tell whether adjudicating criminal cases falls within the constitutional competence of the Federal Courts or the regional courts.

The Federal Courts Proclamation[122] defines common jurisdiction of the Federal Courts. Article 3 of the Proclamation provides that federal courts shall have jurisdiction over cases arising under the Constitution, federal laws and international treaties. From this, one may rightly maintain that Federal Courts do have the competence to entertain cases involving Ethiopia's international obligation under The Hague and similar conventions to which Ethiopia is a party.

In addition, by virtue of Article 4(8) of the Proclamation, Federal Courts do have jurisdiction over crimes committed against the safety of aviation. That

---

[119] Article 4(3), the Hague Convention, *supra* note 5.

[120] For more, see discussions e under 2.4.2; see also Fisseha Yimer, 'Extradition in Ethiopian Laws,' *Journal of Ethiopian Law*, Vol.13 1986, pp.147-156. In this article, Ato Fisseha Yimer eloquently discusses extradition focusing on Article 21 of the 1957 Penal Code and other international treaties to which Ethiopia is a party.

[121] Article 21(2), FDRE Criminal Code.

[122] Federal Courts Proclamation, 1996, *Federal Negarit Gazeta*, Proclamation No. 25/1996, 2nd Year, No.13.

the crime of hijacking is one of the most serious crimes committed against the safety of aviation goes without saying. Hence, it is the federal courts which have criminal jurisdiction to adjudicate criminal cases involving the hijacking of aircraft.

Pursuant to Article 8(4) of the Federal Courts Proclamation, the Federal High court has first instance jurisdiction over "crimes committed against the safety of aviation" which obviously include aircraft hijacking. A cumulative reading of Articles 2 and 8 of the Federal Courts Proclamation (as amended),[123] the Federal Supreme Court can exercise first instance criminal jurisdiction over a hijacker provided the crime is committed by an official of the federal government such as a member of parliament, a member of the House of Federation, an official with ministerial rank, a judge of the Federal Supreme Court and any other official of the federal government of equivalent rank. Besides, where a crime of hijacking is committed by a foreign ambassador, consul, as well as a representative of international organization and a foreign state, the Federal Supreme Court has the power to entertain the case.

At this juncture it must be clear that regional courts of all levels do not have any criminal jurisdiction, under regional capacity, to entertain crimes of hijacking. Nevertheless, the regional supreme courts can entertain cases involving hijackers since they enjoy this power by virtue of the power delegated to them by the FDRE Constitution.[124] Regional Supreme Courts have the power to exercise the jurisdiction of the Federal High Court. Hence, because first instance criminal jurisdiction over the offense of aircraft hijacking, as a matter of rule, belongs to the Federal High Court and because powers of the Federal High Court may be exercised by the regional supreme courts by virtue of constitutional delegation, the latter can exercise the power to try hijackers of aircraft on the basis of such constitutional arrangement.[125] Nonetheless, regional supreme courts exercise delegated power unless and until federal high courts are established in the regional states. As the establishment of the Federal Courts throughout Ethiopia or in some parts of

[123] See generally Proclamation to Amend the Federal Courts Proclamation, 2003, *Federal Negarit Gazeta*, Proclamation No.321/2003, 9th Year, No.41[hereinafter Federal Courts Proclamation as amended].

[124] Articles 78 *cum* 80, FDRE Constitution.

[125] *Ibid*, Article 80(4);

the country is envisaged by the FDRE Constitution,[126] the House of Peoples' Representatives has established federal high courts in Southern Nations, Nationalities and Peoples' Regional State (SNNPRS), Gambella, Benishang-Gumuz, Somali and Afar Regional States in 2003.[127]This means that the respective regional supreme courts in these regional states do not anymore have the power and the responsibility to exercise the jurisdictions of the Federal High Court.[128] Meanwhile, Regional Supreme Courts of Amhara, Oromia, Harari and Tigray Regional States may still exercise criminal jurisdiction over hijackers by virtue of the power delegated to them under the Constitution until federal courts are established in these regions.

The Federal Supreme Court has an appellate jurisdiction over cases involving aircraft hijacking, notwithstanding the case has been first entertained by the regional Supreme Courts or the Federal High Court.[129] Also, the Federal Supreme Court has power of cassation over any final court decision where the decision against which review by cassation is sought contains fundamental error of law. Yet, tests regarding whether a decision contains fundamental error of law have not thus far been outlined in Ethiopia.[130] By the same token, a criminal proceeding involving the prosecution and trial of hijackers in Ethiopia may be subject to cassation review by the Cassation Division of the Federal Supreme Court. Finally, the decision of any court may be subject to constitutional review by the council of

[126] *Id*, Article 78 (2).

[127] Federal High Court Establishment Proclamation, *Federal Negarit Gazeta*, Proclamation No.322/2003, 9th Year, No. 42.

[128] Despite the enactment of the proclamation cited in note 127 above, benches of the Federal High Court have not been established in the regions. Rather, a bench of this court works in circuit; an interview with Ato Amare Amogne, a judge at the Federal Supreme Court (conducted on January 3, 2011).

[129] Article 80(6), FDRE Constitution; Article 10, Federal Courts Proclamation as amended.

[130] Article 80(3)(a), FDRE Constitution. Regarding the problems involved in identifying whether a decision of the lower courts contains fundamental (basic) error of law, see, e.g., Yohannes Heroui, 'ስለሰበር ሥልጠንና ሥርዓቱ ጥቂት ማስታወሻዎች' *Ethiopian Bar Review*, Vol. 3, No.1, 2009, pp.131-148; Muradu Abdo, 'Review of Decisions of State Courts over State Matters by the Federal Supreme Court,'*Mizan Law Review*, Vol.1, No.1, 2007, pp.60-74; Mehari Redae, 'የፌደራል የሰበርና የሰበር ሰበር የስልጣን ምንጭ ገልጠን ብናየው !(በሰበር መ.ቁ 26996 እና 31601 መነሻነት የቀረበ ትችት),' *Journal of Ethiopian Law*, Vol.24, No.2, 2010, pp.201-213; Molla Mengitu, 'ፍርድና በፍረድ ላይ የቀረበ ትችት ፡ የክልል ፍ/ ቤቶች የውክልና የዳኝነት ስልጣንና ውክልናው ቀሪ የሚሆንበት ሁኔታ፣' *Journal of Ethiopian Law*, Vol.24, No.2, 2010, pp.191-200.

Constitutional Inquiry[131] – an advisory body to the House of Federation which has the final power to adjudicate constitutional disputes in Ethiopia.[132]

Concluding Remarks

The aspiration of mankind to fly in the sky materialized at the beginning of the twenty century, heralding the beginning of quick global communication. However, several problems have emerged concurrently with the consolidation of the aviation industry. Hijacking of aircraft is one such formidable menace to civil aviation since at least 1960's.

Since then, numerous conventions have been adopted with a view to coordinate global efforts to combat the threats posed by aircraft hijacking. The 1970 Hague Convention, which specifically addresses the crime of hijacking, is considered to be the anti-hijacking convention *per se***.** This Convention attempts to define acts which constitute hijacking. It also prescribes rules regarding the obligation of states with regard to prosecution and extradition of hijackers. The Convention has taken a unique stance regarding principles of criminal jurisdiction of states parties to the Convention without of course jeopardizing the continuity of principles of criminal jurisdiction of states traditionally known under international law. The Hague Convention reinforces the assumption of criminal jurisdiction based on principles existing under national and international laws.

Despite its strong sides, the convention contains some inbuilt defects. Crucially, the convention does not contain rules on conflict of jurisdiction. Extradition of nationals and the granting or denials of asylum to hijackers (who are also political offenders) are not dealt with squarely. The convention is not also able to resolve conflicts arising between requesting states in the case of extradition.

Ethiopia, a party to the Convention since 1979, assumes international obligation to combat the problem of hijacking. Notwithstanding its international obligation, the crime of hijacking is also a national concern in

[131] Articles 83 and 84, FDRE Constitution.

[132] The Constitution is the supreme law of the land (Article 9(1), FDRE Constitution). This means that no law, no action or no decision should contradict with the Constitution. If any law, or any action or decision of courts contradicts with the constitution, it will be declared null and void by the House of Federation, the interpreter of the Constitution; see Articles 62(1) and 83, FDRE Constitution; also Assefa, *supra* note 97, pp. 383-400.

Ethiopia where hijacking incidents are not new. As far as the jurisdiction to try hijackers is concerned, Ethiopian courts can assume criminal jurisdiction by virtue of the relevant provisions of the Hague Convention and of course the 2005 Criminal Code, albeit the scope of application of the later is more limited than the former. Where principal jurisdiction is assumed, Ethiopian courts try the offender. Where subsidiary jurisdiction is assumed, the tendency would be to extradite offenders to a requesting state in accordance with the provisions of the Convention or any other bilateral treaty signed between Ethiopia and states concerned.

Entertaining criminal cases involving hijackers is the exclusive power of the Federal Courts, though regional supreme courts can exercise this power by virtue of constitutional delegation until and unless federal high courts are established in concerned regional states. At the federal level, it is the Federal High Court of Ethiopia which has first instance jurisdiction to adjudicate criminal cases involving hijacking of aircraft. Yet, Federal Supreme Court may exercise first instance jurisdiction in some exceptional circumstances depending upon the status of the offender.