

# Quashing Convictions

by Philip Baum

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**"If Anne Frank had stolen a car** to escape from Amsterdam and had been charged with theft, the tenets of English law would not have denied her the defence of duress of circumstances on the grounds that she should have awaited the Gestapo's knock at the door."

Using this ruling, on December 17th 1998, Lord Justice Rose quashed the convictions against the six Iraqis who had hijacked a Sudan Airways jet to London in 1996. The men had originally been found guilty and sentenced to prison terms of between five and nine years.

Whilst those fighting for the rights of refugees hailed the appeal verdict as a victory for the oppressed, others expressed their grave concern that it could be seen as a precedent for those who simply wish to venture to pastures greener.

The same week, on the other side of the Atlantic Ocean, Judge Kevin McHugh also exercised leniency when he decided against the deportation of three Cuban men who had, allegedly, forced a pilot to fly a single-motor aircraft from Cuba to Florida, also in 1996. The plane had crashed into the sea off the Florida coast and, whilst they were acquitted of hijacking by a federal jury, INS had kept them in custody for illegally entering the country. Judge McHugh granted them political asylum as he feared that any attempt to enforce their return could result in their being persecuted by the Cuban government.

And so, the debate between legality and humanity rears its head again. In these examples, it is not a matter of a soldier being accused of war crimes whose defence is obeying orders. These are cases of people, being in fear of their lives, relying on humanitarian gestures being extended to them by a supposedly sympathetic Western world. Indeed, it is reassuring to see the judiciary consider the human tragedy rather than to simply pass judgement based upon the law alone. In any case, as Lord Justice Rose indicated, there is a defence in British law of acting under duress of circumstance.

This defence was originally rejected in the Sudan Airways incident due to the time that had elapsed between the fear of harm (when the men had fled Iraq for Sudan as a result of allegedly bearing witness to torture and executions) and their decision to hijack an

aircraft departing from Sudan using fake explosives and knives. The appeal judge considered that the trial judge had interpreted the law too strictly.

The trial, which further highlighted the brutality of Saddam Hussein's regime, happened to coincide with the American and British renewed onslaught of Iraq.

So where do we draw the line between condoning hijacking and, as in the United States, classifying it as a capital crime? We are all in favour of a sympathetic judiciary, yet we cannot allow ourselves to consider the determination of an individual to claim asylum somewhere as justification for acts of aerial piracy. There has to be a clear message that hijacking cannot be condoned. Wherever it occurs, fellow passengers lives are put in jeopardy.

One only has to look back to the 1996 hijacking of the Ethiopian Airlines jet to see the tragic consequences of men desperate to reach their chosen, unticketed, destination. Australia was unreachable and so 125 innocent people perished in the sea off the coast of the Comoros. Or, the October 1990 hijacking of a Xiamen Airlines jet that resulted in 128 deaths as the pilot attempted to land in Guangzhou. Whilst I appreciate that these scenarios do differ from the cases debated in the courts this December, with asylum not necessarily being the motivation and crew non-compliance being a contributory factor, asylum seekers are desperate people and desperate people can resort to extreme measures to achieve their goals. And, we must not forget that the vast majority of hijackings are currently perpetrated by asylum seekers, even if the more traditional image is that of a terrorist.

We should be able both to play our roles as the considerate West, and be seen to uphold the laws of the land. The laws are, after all, also there as a deterrent. Not returning the perpetrators to what, in all likelihood, could have been certain death is one thing, quashing their convictions and legitimising hijacking is another.

Those who wish to follow in their footsteps in the future will then have to consider whether the threat to their lives is so great that they are willing to serve lengthy prison sentences in comparatively luxurious gaols. Granting asylum, albeit in prison, is reasonable, yet we tread a dangerous path when hijack convictions are so readily quashed.

# Dangerous Places: 1998

AIR SECURITY INTERNATIONAL HAS ATTEMPTED TO COMPILE THE MOST DANGEROUS AND COMPLEX LOCATIONS FOR BUSINESS TRAVEL IN 1998. THIS LIST IS BROKEN DOWN INTO FOUR CATEGORIES (CRIME, WAR/INSURGENCIES, POLITICAL VIOLENCE, & KIDNAPPING), ALLOWING FOR A COMPARISON OF VARIOUS DESTINATIONS ON EQUAL TERMS.

## CRIME

- **ALMATY, KAZAKHSTAN** - Urban crime is extremely high, including violent incidents. Corrupt officials and police impostors continue to target foreigners.
- **COLOMBIA** - The high crime rate is affected by the decades-old conflict between guerrillas and the government, the drug trade, and the easy availability of weapons.
- **JOHANNESBURG, SOUTH AFRICA** - Car-jackings, robberies and assaults continue unabated.
- **LAGOS, NIGERIA** - Criminal activity, ranging from pick pocketing to armed robbery and murder, is found in all parts of the city, from the airport to major hotels and business centers.
- **MEXICO CITY, MEXICO** - Taxi-related crime remains a major issue. Corrupt police also continue to force motorists to pay money to avoid being taken to jail.
- **MOSCOW, RUSSIA** - Organized crime groups dominate the city under normal circumstances. The economic crisis has increased crime across the city at all levels.
- **PORT MORESBY, PAPUA NEW GUINEA** - Lack of adequate policing in the city has allowed the formation a number of "rascal gangs," armed with high-powered rifles, handguns, machetes, knives and even grenade launchers.
- **SAO PAULO/RIO DE JANEIRO, BRAZIL** - Both cities suffer from "critical" levels of criminal activity, from street crime to car-jackings that can occur even in upscale neighborhoods.

- **TIJUANA, MEXICO** - Drug-related violence has become a major concern. As a result, Tijuana is gaining the reputation as the next Medellin.

## KIDNAPPING

- **CAUCASUS REGION, RUSSIA** - Kidnappings of foreigners is extremely common. Some victims are released after ransom payments, but many are killed.
- **COLOMBIA** - Retains its title as the nation with the most kidnappings.
- **MEXICO** - Kidnapping rings operate throughout the country, often with the assistance of law enforcement. "Express kidnappings," which occur at a higher frequency than traditional kidnappings, involve abductions for shorter periods of time and smaller ransom payments.
- **PHILIPPINES** - Although it has declined over the past year due to new anti-crime measures, kidnapping remains a concern, primarily for Chinese and Filipino business travelers, with 188 known abductions in 1998.
- **YEMEN** - Tribesmen seeking government concessions frequently target foreign nationals. While most end peacefully, government rescue attempts have lead to deaths.

## WAR / INSURGENCIES

- **ANGOLA** - In the second half of 1998, UNITA has stepped up its activities to the point of almost full-scale war.
- **COLOMBIA** - Despite negotiations, the longest insurgency in the Western Hemisphere continues.
- **DEMOCRATIC REPUBLIC OF CONGO** - The former Zaire has become a regional battleground with two rebel groups and at least seven nations taking part in the fighting.
- **KOSOVO** - Fighting continues between ethnic-Albanian guerrillas demanding independence and Serb military forces.

- **SOMALIA** - This country still has no central government. Fighting continues between the various warlords throughout the country.

- **SOUTHEASTERN TURKEY** - The Kurdish insurgency continues. Armed engagements between Kurdish guerrillas and the Turkish army are a frequent occurrence.

- **SRI LANKA** - There seems to be no end in sight in this vicious war between the government and the Tamil Tiger rebel group.

- **TAJIKISTAN** - Near constant fighting between rebel groups and government forces makes most of the country dangerous for travel. Dushanbe is often the site of the most serious fighting.

## POLITICAL VIOLENCE

- **BANGLADESH** - Opposition-led strikes frequently erupt into violence in major cities.
- **COLOMBIA** - The drug trade, the guerilla insurgency and politics are inextricably linked. Bombings, kidnappings, and assassinations of journalists and politicians intensify urban political violence. In rural areas villagers are torn between right-wing paramilitary groups, the Colombian military, and leftist guerrillas.
- **INDONESIA** - Outbreaks of violence between security forces and political demonstrators continues to affect Jakarta while waves of rioting sparked by hard economic times are prevalent throughout the country.
- **KARACHI, PAKISTAN** - More than 4,000 people have died in ethnic, sectarian and political violence in Karachi since 1995.

Air Security International's staff consists of highly trained personnel with multi-disciplinary security backgrounds; the President, Issy Boim, has over 30 years of security experience, including 22 years in the Israeli Security Services (Shin Bet).