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Aircraft Hijacking: Some Domestic and International Responses

By JOHN A. VOLPE* and JOHN T. STEWART, JR.**

Air piracy is one of the gravest problems of our time. From the domestic reactions to the first symptoms of the malady—the detours to Havana in the early 1960's—to the strengthened domestic and international response to the epidemic at the turn of the decade, Secretary Volpe and Mr. Stewart here catalogue a definitive statement of what has been done and what yet must be done to combat air piracy and international blackmail: the legal and scientific devices employed by the U.S. and urged for other countries, and international cooperation such as in the Tokyo Convention, the Hague Convention† of December, 1970, and the draft conventions remaining on the international agenda.

On May 1, 1961, an armed Cuban exile named Elphi Crosisi, who reportedly considered himself to be the reincarnation of a Spanish Main pirate by the name of Cofrisi, entered the cockpit of a United States National Airlines aircraft on a flight from Marathon to Key West, Florida, and forced the pilot to fly to Cuba.¹ Thus began what was to become a decade of concern, both domestically for the United States and eventually for the entire world, with the phenomenon of "aircraft hijacking" or, as it was more dramatically called in the earlier years of the decade,

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† The Hague Convention of December, 1970, appears as Appendix A to this article.

¹ N.Y. Times, May 2, 1961, at 1, col. 6.

"aircraft piracy." During that decade there have been over 200 attempts of aircraft hijacking.²

The hazards to aviation safety posed by this activity were summarized by the Acting Administrator of the Federal Aviation Administration [hereinafter FAA] in testimony before the House Interstate and Foreign Commerce Committee. He pointed out that—

[H]ijacking has involved physical danger to the passengers and the crew. Passengers have been held as hostages or intimidated and crewmembers have been subjected to minor assaults. It is obvious that should a bomb or other form of explosive discharge aboard an aircraft that the aircraft could be lost. Gunplay aboard could involve injury or death among the crew or passengers. As to the possible effects of bullets penetrating the aircraft fuselage, there is little danger of catastrophic effects regarding cabin pressurization; however, there is danger that critical aircraft parts could be hit and rendered inoperable (hydraulic or electrical systems, radios, or fuel tanks).

There is always the danger that the hijacker could insist on diverting the flight to a destination beyond the range of the aircraft's fuel supply. This could result in a ditching, a crash landing, or an emergency landing at an airport without the required runway length for the aircraft involved. The aircraft could be diverted to an airport at which bad weather and a lack of navigational aids would make an approach and landing unsafe. The hijacker could divert the aircraft to an unfriendly or hostile country where the passengers would be subject to imprisonment.

The action of the hijacker in exploding a bomb or firing a gun or the general commotion caused by the seizure could cause a fire on board the aircraft with resulting injuries, death, or accident.

The act of seizing the aircraft by the hijacker might cause certain passengers to react in an imprudent manner resulting in injuries to themselves or other passengers on the aircraft.³

² According to statistics maintained by the Federal Aviation Administration's Office of Air Transportation Security. For the period May 1, 1961 through December 29, 1970, there had been 100 hijacking attempts involving U.S. aircraft—77 successful and 23 unsuccessful. 19 different U.S. carriers have been involved and hijackers have boarded air carriers in 44 different cities.

³ HOUSE COMM. ON INTERSTATE AND FOREIGN COMMERCE, PRELIMINARY REP., AIRCRAFT PIRACY, H.R. REP. No. 91-33, 91st Cong., 1st Sess. 3 (1969).

Recognizing these dangers, what then has been done to combat the problem? The United States Government and the world community have responded to the highly dangerous activity in a variety of ways. The objectives have been deterrence, prevention, and the assurance of punishment.

THE U.S. RESPONSE—AN EARLY REACTION

The Crosisi incident was followed in July, 1961 by the hijacking to Cuba of an Eastern Airlines' flight from Miami.⁴ The dramatic nature of these incidents catalyzed the United States Government into action. The reaction to these "first" series of hijackings occurring in 1961 was immediate and was designed to create a legal framework within which the United States could deal with the problem. On July 28, 1961, four days after the hijacking of the Eastern flight, the FAA issued a Special Civil Air Regulation (SR-448) which prohibited interference with flight crewmembers in the performance of their duties and the carrying of concealed firearms by unauthorized persons aboard airline aircraft.⁵ The preamble to Special Civil Air Regulation No. SR-448A stated:

The recent hijackings of air carrier aircraft have highlighted a necessity to provide additional controls over the conduct of passengers in order to avoid a serious threat to the safety of flights and persons aboard them. The Federal Aviation Agency has the responsibility to see that air carriers take such steps as are possible to prevent such occurrences. We have requested the air carriers to take every practicable precaution to prevent passengers from having access to the pilot compartment. In addition, we are adopting a regu-

⁴ N.Y. Times, July 25, 1961, at 1, col. 7.

U.S.C. § 1472(j). Similarly, the unauthorized carrying, or attempting to carry, a concealed deadly or dangerous weapon on board an air carrier aircraft has also been made a federal crime. See 49 U.S.C. § 1472(1). Present Federal Aviation Regulations, 14 C.F.R. § 121.585 (1970 Supp.), provide:

No person may, while aboard an airplane being operated by an air carrier in air transportation, carry on or about his person a deadly or dangerous weapon, either concealed or unconcealed. This paragraph does not apply to—

(a) Officials or employees of a municipality or a State, or of the United States, who are authorized to carry arms; and

(b) Crewmembers and other persons authorized by the air carrier to carry arms.

lation which will prohibit any person, except one who is specifically authorized to carry arms, from carrying on or about his person while aboard an air carrier aircraft a concealed deadly or dangerous weapon. The regulation being adopted will also make it a violation of the CARs [Civil Air Regulations] for any person to assault, threaten, intimidate, or interfere with a crewmember in the performance of his or her duties aboard an air carrier aircraft or to attempt to or cause a flight crewmember to divert the flight from its intended course or destination.

Violation of this regulation carried with it a maximum civil penalty of \$1,000 for each offense.⁶

On August 3, 1961, a third hijacking took place. An ex-convict, Leon Beardon, and his 14-year old son Cody, hijacked a Continental Airlines flight from Los Angeles to Houston.⁷ Primarily as a result of this and the two previous hijackings, Congress passed Public Law No. 87-197 which was signed by President Kennedy on September 5, 1961.⁸ This law amended the Federal Aviation Act of 1958 and prescribed severe Federal penalties for the commission of certain crimes, including aircraft piracy, aboard aircraft.⁹ "Aircraft piracy" is defined in the statute as meaning "any seizure or exercise of control, by force or violence or threat of force or violence and with wrongful intent, of an aircraft in flight in air commerce."¹⁰ The choice of the term "air piracy" is best explained by the following excerpt from the Report of the Committee on Interstate and Foreign Commerce which accompanied H.R. 8384, the House bill to amend the Federal Aviation Act of 1958:

⁶ 49 U.S.C. § 1471(a)(1).

⁷ N.Y. Times, Aug. 4, 1961, at 1, col. 2.

⁸ Act of Sept. 5, 1961, Pub. L. No. 87-197, 75 Stat. 466.

⁹ 49 U.S.C. § 1472(i) (1964) (air piracy); 49 U.S.C. § 1472(j) (1964); (interference with flight crew); 49 U.S.C. § 1472(k)(1) (1964); (offenses subject to Federal jurisdiction if committed within the special maritime and territorial jurisdiction of the U.S. These include assault, maiming, larceny, receiving stolen property, murder, manslaughter, attempt to commit murder or manslaughter, rape, carnal knowledge and robbery; 49 U.S.C. § 1472(k)(2) (1964). Certain acts which if committed in the District of Columbia would be a violation of the Act entitled "An Act for the preservation of public peace and protection of property within the District of Columbia" (D.C. Code sec. 22-1112); 49 U.S.C. § 472 (1) (1964) (the unauthorized carriage of a concealed weapon); 49 U.S.C. § 1472(m) (1964) (impairing false information).

¹⁰ 49 U.S.C. § 1472(i)(2).

The term "piracy" is one which in ordinary usage, is associated with acts committed on the high seas. In this sense it is an offense against the law of nations. There is no intention, however, that the meaning and interpretation of this subsection shall be influenced in any way by precedents or interpretations relating to "piracy on the high seas." In recent weeks, because of news reports in the press and on TV and radio, the term "piracy," along with the term "hijacking," has come to be associated with the incidents that have occurred in which individuals, by force or violence or threats thereof, have taken over the control of aircraft and forced the pilot and other flight crew members to do their bidding, often at risk of life to crew and passengers. Therefore, in defining this particular offense it seemed both convenient and desirable to use the term "piracy."¹¹

The law made aircraft piracy punishable by death under certain circumstances or "by imprisonment for not less than twenty years, if the death penalty is not imposed."¹² Other sections made it a crime to assault, threaten, intimidate or interfere with flight-crewmembers¹³ and prohibited the carriage of concealed weapons by unauthorized persons.¹⁴ The maximum penalty for carrying concealed weapons was a \$1,000 fine or a year in prison, or both.¹⁵ The law also authorized an air carrier, subject to reasonable FAA rules, to refuse to transport persons or property that it believed would endanger safety in flight.¹⁶

It should be noted that while the hijacking incidents provided the impetus for rapid action on the part of the Congress, the United States Government had for some time been concerned with the problems of crimes committed on board aircraft. Prior to the "aircraft piracy" amendments to the Federal Aviation Act of 1958, certain modifications had been made in the domestic law of the United States in order to extend the Federal special maritime and territorial jurisdiction to include aircraft in flight.¹⁷

¹¹ H.R. REP. No. 958, 87 Cong., 1st Sess. § 1 (1961).

¹² 49 U.S.C. § 1472(i)(L) (1964).

¹³ 49 U.S.C. § 1472(j).

¹⁴ 49 U.S.C. § 1472(l).

¹⁵ 49 U.S.C. § 1472(1).

¹⁶ 49 U.S.C. § 1511.

¹⁷ 18 U.S.C. § 7(5).

In 1950, in the case of *United States v. Cordova*,¹⁸ it became apparent that certain jurisdictional problems arose where crimes were committed aboard aircraft in flight over the high seas. The *Cordova* case concerned two passengers aboard an American aircraft over the high seas who assaulted each other, and when the captain intervened, assaulted him. *Cordova* was brought to trial under the provisions of the special maritime and territorial jurisdiction of the United States.¹⁹ However, the court dismissed the case for lack of jurisdiction, since the plane was not a "vessel" within the terms of the statute.²⁰ Moreover, the court was cognizant of the fact that the statute referred to the "high seas" but not to the air above the waters.²¹ As a result of the *Cordova* decision, Congress added a new subsection to the law extending Federal jurisdiction to aircraft owned by the United States, its citizens and corporations "while such aircraft is in flight over the high seas or over any other waters within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular state."²²

An additional significant defect in the law was brought to light by an incident aboard a United Air Lines flight bound from Chicago to Los Angeles on July 8, 1961. An intoxicated passenger assaulted the captain of the aircraft with a knife, but was subdued by the captain and another passenger before he could inflict any actual harm. The knife incident was believed to have occurred over the State of Nevada. The passenger was arrested upon landing in Los Angeles and taken to a local court where he pleaded guilty to being intoxicated in a public place and was sentenced to 90 days in jail. It was found that the provisions of 18 U.S.C. § 7(5) could not be applied since that section expressly provides for Federal jurisdiction over an aircraft in flight "out of the jurisdiction of any particular state."²³ There was much confusion over which state law to apply. This confusion led Senator Clair Engle of California to state:

¹⁸ 89 F. Supp. 298 (E.D.N.Y. 1950).

¹⁹ 18 U.S.C. § 7 (1940).

²⁰ 89 F. Supp. at 302.

²¹ *Id.*, at 303.

²² *Supra* note 17. For legislative history and purpose of this act see H.R. REP. No. 2257, 82nd Cong., 2d Sess. 1 (1952).

²³ *Supra* note 17.

At the present time, jurisdiction . . . rests with the State over which commercial planes are flying at the time an incident occurs. However, existing law is too often unworkable because the precise location of the crime cannot always be determined, because the crime may extend over multiple jurisdictions and because officers at the termination point of flights do not have authority to enforce laws of other States.²⁴

Thus, while the 1961 amendments to the Federal Aviation Act of 1958 were enacted in order to make the act of hijacking a Federal criminal offense, they were also designed to resolve the jurisdictional difficulty to which Senator Engle referred. As stated by the court in *United States v. Healy*:

[O]ne of the . . . purposes of the aircraft piracy amendment was to provide a solution to the jurisdictional problems involved in fixing a locus for a crime committed in transit and in arresting a deplaning passenger who may have engaged in criminal activity over the territory or a different State. . . .²⁵

In addition to these regulatory and legislative actions, other steps were being taken to counteract the hijacking threat. In August, 1961, in testimony before the Aviation Subcommittee of the Senate Commerce Committee, Najeeb Halaby, then Administrator of the Federal Aviation Agency, told the Congress:

In July we flashed the alarm about the hijacking threat to all of the airlines. Senator Pastore, we directed the air carriers to lock and bar that door at first on those flights operationally capable of reaching Cuba, and secondly on all flights. We intend, and I believe the air carriers intend, to tighten up the security of the cockpit and, wherever possible, to control access through that door from within the cockpit rather than without.

This is not an easy problem. That door was a sort of peaceable door. It is light in construction. A heavy man can charge it and break through. And the air carriers are this minute in the act of trying to make a more difficult barrier there.

²⁴ *Hearings on S. 2268, S. 2375, and S. 2374 Before the Aviation Subcomm. of the House Comm. on Commerce, 87th Cong., 1st Sess., 4 (1961).*

²⁵ 376 U.S. 75 (1964).

. . . .

Second, and I want to be clear on this one, we have authorized the air carriers to arm the crew only if the crew has recent training in the use of sidearms and is believed to be demonstrably proficient in their use. We do not want a man unproficient in the use of automatic arms in the cockpit.

There seems to be some confusion in the last 24 hours perhaps that I or the President had directed the arming of the crew members. This is not the case. We have authorized them to go back to the early practice in the airlines when the pilot and the copilot carried sidearms because they had been deputized as postal inspectors. They were flying "gun" on the mail. In recent years that has not been the case. We have simply said that if the air carriers in their own judgment wish to arm their crew, they may do so only if recent training and demonstrable proficiency is present.

We have also authorized the air carriers to carry in the cab or in the cockpit armed guards. In at least one case this is so.

We have offered yesterday, through the Department of Justice—"we" being the President and the executive branch—a \$10,000 reward for anyone giving to the local office of the Justice Department and the Federal Bureau of Investigation information leading to the apprehension of an individual attempting one of the crimes covered by this bill.

A third thing we have done, working in collaboration with the air carriers through their very able Air Transport Association here in Washington, is to tighten up on the surveillance and observation of enplaning passengers, to keep them off the airplane before they get inside and making the trouble. This is difficult.

What we have told them is not to leave this up to a ticket taker at the counter but to have a senior supervisor, an individual on duty, particularly during this period, who will observe enplaning passengers and when there is reason to believe they are carrying concealed weapons or intending to commit a crime, or a violation of our regulations, that they immediately bring in the local law enforcement official and turn the search and seizure, if necessary, over to that official.

The Justice Department has very helpfully and wisely alerted law enforcement officials all over the United States to collaborate with the airlines in this matter. So we have

adopted a graduated action, a series of actions to fit the crime and the threat.

We can go on if it becomes necessary. We could, for example, cause every enplaning passenger for a flight who was capable of flying on to Cuba while hijacked, every passenger to submit to a complete inspection of his person and effects. You can readily imagine the line that would extend from the ticket counter at Miami International Airport if every person, man, woman, and child, had to submit to the kind of inspection that a police official might require to be sure that there were no concealed weapons.

So we have that under consideration with the air carriers. We feel that it is a very drastic step, and perhaps may not be in order at this time.

The final step that has been thought about, but not activated, is the stationing of uniformed U.S. guards on selected flights. If we need to, that is one additional step.²⁶

On August 3, 1961, the agency sent a wire to the airlines requesting that the cockpit door on all airline aircraft be kept locked to prevent unauthorized persons from entering the flight deck.²⁷ The airlines also were authorized to provide sidearms to properly-trained crewmembers²⁸ and \$10,000 reward was offered through the Department of Justice for information leading to the arrest of potential hijackers.²⁹

In the fall of 1961 the FAA, in cooperation with the Department of Justice, initiated the "Peace Officers Program."³⁰ Better known as "sky marshals," these men are graduates of a special training course at the U.S. Border Patrol Academy in Port Isabel, Texas, and are trained to prevent hijackings aboard the aircraft which they have been assigned to ride either on request from the airline company or the FBI. They were first sworn in as Special U.S. Deputy Marshals by the then Attorney General Robert F. Kennedy on March 27, 1962.

On May 7, 1964, the FAA adopted a rule requiring that the cockpit doors on all airline and other commercial aircraft be kept

²⁶ *Supra* note 24, at 12.

²⁷ Telegram from FAA Administrator N. E. Halaby to 30 airline presidents, Aug. 3, 1961.

²⁸ *Id.*

²⁹ *Id.*

³⁰ For a description of the program see 2 F.A.A. AVIATION NEWS 6 (1963).

locked in flight. The rule became effective on August 6 of that year.³¹

Immediately after these actions the incidents of hijacking diminished until late 1967³² when hijacking began increasing, reaching epidemic crescendo in 1968 and 1969. U.S. aircraft were being hijacked to Cuba at an almost unbelievable rate.³³ While the reaction to the earlier rash of hijackings was to create a legal framework within the United States to punish and deter hijackers, it became apparent that this framework was being rendered impotent because the hijacker had found a "safe haven" from U.S. jurisdiction.³⁴ Consequently, the United States Government began focusing all of the disciplines available in searching out a solution—legal, engineering, medical, informational and diplomatic.

THE U.S. RESPONSE—A SECOND EFFORT

Having established a legal framework within which hijackers are subject to prosecution and punishment, the United States again in the closing years of the decade concentrated its efforts on the development of methods to prevent hijacking from occurring. The Federal Aviation Administrator of the Department of Transportation is charged with promotion of safety in air commerce.³⁵ To meet this responsibility the FAA and its predecessor agencies have delved into all aspects of the physical environment of aviation with the view to making it as safe as possible. That agency, by a process of education, and armed with a pervasive regulatory scheme,³⁶ had taken steps to ensure that the hazards to air transportation were eliminated wherever they could be identified: the aircraft itself had to be airworthy

³¹ For current applicable Federal Aviation Regulation see 14 C.F.R. § 121.587 (1970 Supp.).

³² During 1962, 1963 and 1964 no U.S. air carrier aircraft was hijacked. Four hijackings of U.S. air carrier aircraft occurred in 1965 and none in 1966 and 1967. (Statistics supplied by the Federal Aviation Administration's Office of Air Transportation Security.)

³³ During 1968 there were 18 successful hijackings of U.S. aircraft (13 air carrier and 5 general aviation aircraft). In 1969 there were 33 successful hijackings of U.S. aircraft. All were air carrier aircraft. (Statistics supplied by the Federal Aviation Administration's Office of Air Transportation Security.)

³⁴ The destination of the vast majority of U.S. hijackers has been Cuba—a country with which the U.S. does not maintain diplomatic relations.

³⁵ 49 U.S.C. § 1303(a).

³⁶ The Federal Aviation Regulations consist of 189 separate parts. 14 C.F.R. Parts 1 through 189 (1970 Supp.).

and properly maintained, the crews were required to maintain competency and proficiency, and the system of communication had to be as efficient as the state of the art permitted. However, this new hazard to safety—"the hijacker"—was to become characterized as "our most frustrating safety problem."³⁷ For unlike the aircraft and crews which could be physically tested to ensure the maximum degree of safety, all passengers boarding an aircraft could not be placed in a "wind tunnel" to determine who, if any, might be a hijacker. Or could they?

The Federal Aviation Administration created a Special Hijacking Task Force³⁸ charged with the responsibility of seeking a solution to the problem of hijacking. This Task Force and other elements of the FAA began examining several means of searching out weapons which could possibly be concealed on passengers or in baggage and could be used to hijack or destroy commercial aircraft. Among such methods considered was the use of X-ray, radar, electromagnetic detection devices and magnetometers. Indeed, the American public, also aroused by the increasing frustration in dealing with the hijacking problem, was coming forth with suggestions. According to the Preliminary Report on Aircraft Piracy by the House Committee on Interstate and Foreign Commerce, the following ten suggestions were most frequently submitted by the public:

1. Provide free transportation to Cuba for those persons desiring to leave the United States.
2. Have armed guards stationed aboard each U.S. air carrier passenger flight.
3. Offer a substantial reward to Castro for the return of hijackers to the United States.
4. Build a simulated Havana airport in Florida, man it with U.S. military personnel disguised as Cuban militiamen to deceive and apprehend hijackers.
5. Bulletproof the pilot's compartment and only have communications one way—from the cockpit to the cabin.
6. Search every passenger either physically by X-ray or fluoroscope or through the use of metal detectors.
7. Have the pilots depressurize the aircraft until everyone

³⁷ Federal Aviation Administration Press Release 69-25 (Feb. 28, 1969).

³⁸ The Task Force was established in Feb. 1969 by direction of the Acting Administrator of the Federal Aviation Administration.

goes to sleep or expel a sleeping gas throughout the cabin to put everyone to sleep. The crew would go on oxygen and later disarm the hijacker.

8. Equip all crewmembers with Mace which would be used to immobilize the hijacker.

9. Equip guards or crewmembers with a tranquilizer dart gun similar to that used on "Daktari" to put animals to sleep so that they can be captured.

10. Require an identification card or air passport of people that wish to buy tickets on U.S.-scheduled air carriers. Applications for identification cards would be thoroughly screened prior to being issued the card.³⁹

These efforts resulted in the development by the FAA of what has been described an anti-hijacking system. Dr. H. L. Reighard, Deputy Federal Air Surgeon of the Federal Aviation Administration, in testifying in November, 1969 before a Subcommittee of the House and Interstate Foreign Commerce Committee in response to inquiries concerning efforts to prevent hijacking, described a system as follows:

It consists of a behavioral profile of the proposed characteristics of past hijackers which can be applied by the airlines personnel. Application of this profile will clear for boarding more than 99 percent of passengers who travel domestically on U.S. airlines. This means we are left with possibly 1 percent of passengers about whom we still have some concern. They then pass through a metal screening device which does give an indication of the presence of metal depending on its mass and whether it is a weapon or some other similar sized ferrous metal object.

When the device gives an indication, at that point we are not certain as to whether it is a weapon or some other similar ferrous metal mass. However, the device has been refined technically to the point that it does not give an indication for a belt buckle, a fountain pen, a wrist watch, or any other ordinary objects likely to be carried by a passenger.⁴⁰

Should application of the system identify a possible hijacker, he is then asked to show any metal objects which he might be carrying on his person or in his hand luggage and, if necessary, to submit

³⁹ *Supra* note 3, Appendix 8.

to a search. The question arises, of course, as to the basis upon which such a request can be made and what happens if a person refuses to permit such a search. As was noted earlier, the Federal Aviation Act of 1958 was amended in 1961 to permit air carriers, subject to reasonable rules and regulations by the Administrator of the FAA, to refuse to transport persons or property that they believed would endanger safety in flight.⁴¹ The Act provides that every air carrier and every foreign air carrier shall file tariffs with the Civil Aeronautics Board detailing rates, fares, and charges for air transportation and further indicating to the extent required by regulations of the Board, all classifications, rules, regulations, practices and services in connection with such air transportation.⁴² Present domestic carrier passenger rules for a number of U.S. carriers provide as follows:

1. Rule 3 "ELECTRONIC SURVEILLANCE OF PASSENGERS AND BAGGAGE. Passengers and their baggage are subject to inspection with an electronic detector with or without the passenger's consent or knowledge."

2. Rule 6 "REFUSAL TO TRANSPORT,

(A) Carrier will refuse to transport or will remove at any point, any passenger . . .

(2) . . . whose conduct, status, age, or mental or physical condition is such as to . . .

(b) make such refusal or removal necessary for the reasonable safety or comfort of other passengers; or

(c) involve any unusual hazard or risk to himself or to other persons . . . or to property.

(3) who refuses to permit search of his person or property for explosives or a concealed, deadly, or dangerous weapon or article . . .

(C) *Liability* Carrier is not liable for its refusal to transport any passenger or for its removal of any passenger in accordance with the preceding paragraphs of this rule. . . ."⁴³

⁴⁰ *Hearings on H.R. 14301 before the Subcomm. on Transportation and Aeronautics of the House Comm. on Interstate and Foreign Commerce, 91st Cong., 1st Sess., Ser. 91-26, at 13 (1969).*

⁴¹ 49 U.S.C. § 1511 (1964).

⁴² 49 U.S.C. § 1373 (1964).

⁴³ Local and Joint Passenger Rules Tariff No. PR-5, CAB No. 117, p. 9, effective Oct. 27, 1968.

Thus, as part of the contract of carriage, a carrier may refuse transportation to a passenger who refuses to permit search of his person or property. This anti-hijacking system has been employed on a voluntary basis since 1968 by a number of U.S. domestic and flag carriers.⁴⁴ The system represents a positive step forward in preventing would-be hijackers from boarding U.S. air carrier aircraft.

A new and dangerous breed of hijacker emerged in September, 1970 when members of a Palestinian underground group seized four aircraft and diverted three of them to the Jordanian desert.⁴⁵ One of the aircraft was flown to Beirut and then to Cairo where, after the passengers were discharged, the aircraft was destroyed.⁴⁶ These series of hijackings introduced a new form of threat to civil aviation for the hijackings were part of a political stratagem by which the aircraft and its passengers were to be held hostages until certain members of that underground group who were imprisoned in other countries were released. Thus, aircraft and passengers became the pawns in a game of international blackmail. This action so incensed the United States that President Nixon, on September 11, 1970, issued the following statement:

The menace of air piracy must be met—immediately and effectively. I am therefore announcing the following actions to deal with this problem:

1. To protect United States citizens and others on U.S. flag carriers, we will place specially trained, armed United States government personnel on flights of U.S. commercial airliners. A substantial number of such personnel are already available and they will begin their duties immediately. To the extent necessary they will be supplemented by specially trained members of the Armed Forces who will serve until an adequate force of civilian guards has been assembled and trained. We will also make anti-sabotage training available to airlines personnel.
2. I have directed the Department of Transportation to have American flag carriers extend the use of electronic surveillance equipment and other surveillance techniques to all

⁴⁴ In 1969 Eastern Airlines became the first air carrier to employ the system.

⁴⁵ *TIME*, Sept. 21, 1970, at 18.

⁴⁶ *Id.*

gateway airports and other appropriate airports in the United States and—wherever possible—in other countries. The Federal government will provide enforcement officers to work with this equipment, to conduct searches when appropriate and to make necessary arrests. Such equipment and techniques have already helped to reduce the problem of air piracy in many areas.

3. I have directed the Departments of Transportation, Treasury and Defense, the Central Intelligence Agency, the Federal Bureau of Investigation, the Office of Science and Technology and other agencies to accelerate their present efforts to develop security measures, including new methods for detecting weapons and explosive devices. At the same time, the Departments of Defense and Transportation will work with all U.S. airlines in determining whether certain metal detectors and x-ray devices now available to the military could provide immediate improvement in airport surveillance efforts. To facilitate passenger surveillance, appropriate agencies of the Federal government will intensify their efforts to assemble and evaluate all useful intelligence concerning this matter and to disseminate such information to airlines and law enforcement personnel.

4. I am directing the State Department and other appropriate agencies to consult fully with foreign governments and foreign carriers concerning the full range of techniques which they use to foil hijackers. Some foreign airlines—though they are particularly susceptible to hijacking—have been successful in deterring hijackers and in coping with piracy attempts. We want to learn all we can from their experience.

5. It is imperative that all countries accept the multilateral convention providing for the extradition or punishment of hijackers which will be considered at the International Conference which will be held under the auspices of the International Civil Aviation Organization. I affirm the support of the United States both for this Convention and for the Tokyo Convention, which provides for the prompt return of hijacked aircraft, passengers and crew. I call upon other governments to become parties to these conventions.

I further call upon the international community to take joint action to suspend airline services with those countries which refuse to punish or extradite hijackers involved in inter-

national blackmail. For this purpose and in order to consider other ways and means of meeting this new international menace, I have directed the Secretary of State to ask the President of the Council of the International Civil Aviation Organization immediately to convene that Council in an emergency meeting.

6. It is the policy of the United States government to hold the countries in which hijacked planes are landed responsible for taking appropriate steps to protect the lives and the property of U.S. citizens.

7. An additional indication of our deep concern with the hijacking menace is the request which the United States and the United Kingdom made earlier this week for an urgent meeting of the United Nations Security Council to consider this problem. I am gratified by the unanimous action of the Security Council in calling upon the parties concerned immediately to release all hijacked passengers and crews. I am pleased, too, that the Security Council has asked all nations to take all possible legal steps to protect against further hijackings or other interference in international civil aviation.

* * * *

These are not the only steps we will take in the coming months to meet the threat of airplane hijacking. But they do provide a decisive program for the immediate future. The Secretary of Transportation will direct this program and take responsibility for preparing further proposals. In this capacity he will work closely with the Secretary of State, the Secretary of the Treasury, the Attorney General, and the Secretary of Defense.

Piracy is not a new challenge for the community of nations. Most countries, including the United States, found effective means of dealing with piracy on the high seas a century and a half ago. We can—and we will—deal effectively with piracy in the skies today.⁴⁷

Following this Presidential directive, a special office⁴⁸ was established in the Department of Transportation and charged with the implementation of the President's directive insofar as it

⁴⁷ Press Release, Office of the White House Press Secretary, Sept. 11, 1970.

⁴⁸ Office of Civil Aviation Security. The President appointed retired Air Force Lt. Gen. Benjamin O. Davis, Jr., Director of Civil Aviation Security.

related to a development and implementation of measures to prevent hijacking.⁴⁹ As a result, the use of the anti-hijacking system has been further expanded and specially trained sky marshals are now riding on U.S. aircraft.⁵⁰

Hence, in the course of a decade the United States Government, in its efforts to combat aircraft hijacking, has enacted penal legislation, promulgated regulatory controls, and developed a systems approach on the ground and in the air to thwart the would-be hijacker. While these measures were being taken by the United States, the world community, at times led principally by United States' initiatives, was also responding to the hijacking problem.

THE INTERNATIONAL RESPONSE

The Tokyo Convention

The international community had since 1950 been struggling with the problems created by crimes committed on board aircraft. The Legal Committee of the International Civil Aviation Organization began a study of the problem in 1950, and in 1958 developed a draft of an international convention on the subject of crimes aboard aircraft. This Convention eventually evolved into what has been popularly called the Tokyo Convention.⁵¹ Fundamentally, the Convention is a jurisdictional one which has for its principal purpose the establishment of a positive rule of international law between the Contracting Parties that the State in which the aircraft is registered is competent to exercise jurisdiction over crimes committed on board that aircraft while it is in flight.⁵² Additionally, the Convention deals with the role of the aircraft commander and his powers relevant to the acts of offenders relative to criminal acts or acts endangering the safety of the aircraft which occur on board; granting the commander appropriate authority to cope with such situations and affording

⁴⁹ *Supra* note 45.

⁵⁰ For a general discussion of steps taken to expand initially the sky marshal program *see* AVIATION WEEK AND SPACE TECHNOLOGY, Sept. 28, 1970, at 26.

⁵¹ Formally titled "Convention on Offences and Certain Other Acts Committed on Board Aircraft." For a detailed analysis of the Convention *see* Boyle & Pulsifer, "The Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft," 30 J. AIR L. & COM. 305 (1964).

⁵² Convention on Offences and Certain Other Acts Committed on Board Aircraft, Art. 3, TIAS No. 6768, 20 U.S.T. 2941.

him a basis of protection in any proceedings brought against him for reasonable acts in handling such matters. Similar protection is extended to members of the crew.⁵³ While the Convention does not attempt to make aircraft hijacking an international crime, it does contain provisions which obligate the country in which a hijacked aircraft lands to restore the hijacked aircraft to those entitled to its possession and which impose an obligation on Contracting States to permit passengers and crew of such aircraft to continue their journey as soon as practicable.⁵⁴ The inclusion of these particular provisions was a result of United States' efforts, and the reason for their introduction into the Convention can be traced to the series of hijackings of U.S. aircraft which occurred in 1961.⁵⁵ These facets of the Convention gained particular importance during the late 1960's.⁵⁶ The United States ratified the Tokyo Convention in 1969 and with its deposit of ratification, the Convention came into force as between Contracting States in December 1969.⁵⁷

⁵³ *Id.*, Arts. 5-10.

⁵⁴ *Id.*, Art. 11.

⁵⁵ Report of the United States Delegation to the Diplomatic Conference on Air Law held under the auspices of the International Civil Aviation Organization, Tokyo, Japan, Aug.-Sept. at 33 (1963).

⁵⁶ With the increase in hijackings there was growing concern for the safety of the hijacked passengers, crew and aircraft. Adherence to the principles of Article 11 of the Convention became the subject of ICAO and U.N. resolutions.

⁵⁷ There are now over 30 parties to the Convention. In connection with the ratification of the Convention it became necessary for the U.S. to amend again the Federal Aviation Act of 1958 in order to enable the U.S. to meet its obligations thereunder. Public Law 91-449, 91st Cong., provided that—

(1) A new subsection (32) be inserted in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301) as follows:

“(32) The term ‘special aircraft jurisdiction of the United States’ includes the following aircraft while in flight—

“(a) civil aircraft of the United States;

“(b) aircraft of the national defense forces of the United States; and

“(c) any other aircraft—

“(i) within the United States, or

“(ii) outside the United States which has its next scheduled destination or last point of departure in the United States provided that in either case it next actually lands in the United States.

For the purpose of this definition, an aircraft is considered to be in flight from the moment when power is applied for the purpose of takeoff until the moment when the landing run ends.”

(2) Existing subsections (32), (33), (34), and (35) are renumbered (33), (34), (35), and (36), respectively.

(3) Subsections 902(i), (j), and (k) of such Act (49 U.S.C. 1472 (i), (j), and (k)) are amended by deleting the words “in flight in air commerce” wherever they appear in those subsections and substituting therefor the words “within the special aircraft jurisdiction of the United States.”

*Extradition or Prosecution: Removal of
the Safe Haven by the Hague Convention*

While the Tokyo Convention was signed by the United States in 1963, the impetus for its ratification in 1969 was the alarming increase in U.S. air carrier aircraft hijackings during 1968 and 1969. In that period of time there were 51 successful hijackings and 11 aborted attempts.⁵⁸

The world community was now beginning to show an awareness of the magnitude of the problem. The Sixteenth Session of the Assembly of the International Civil Aviation Organization held in Buenos Aires, Argentina, in September 1968, passed the following Resolution:

Unlawful seizure of civil aircraft

WHEREAS unlawful seizure of civil aircraft has a serious adverse effect on the safety, efficiency and regularity of air navigation,

NOTING that Article 11 of the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft provides certain remedies for the situation envisaged,

BEING however of the opinion that this Article does not provide a complete remedy,

THE ASSEMBLY

- (1) Urges all States to become parties as soon as possible to the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft;
- (2) INVITES States, even before ratification of, or adherence to, the Tokyo Convention, to give effect to the principles of Article 11 of that Convention;
- (3) REQUESTS the Council, at the earliest possible date, to institute a study of other measures to cope with the problem of unlawful seizure.⁵⁹

⁵⁸ Statistics supplied by the Federal Aviation Administration's Office of Air Transportation Security.

⁵⁹ Resolution A-16-37 of the Sixteenth Assembly, ICAO Doc. 8779, Res. A/16 at 92.

The Council of ICAO, in response to the request from the Assembly contained in the Resolution, referred the subject of unlawful seizure of aircraft to the Legal Committee of ICAO for study. The Chairman of that Committee established a Subcommittee for that purpose which met in two sessions, the first in February 1969 and the second in September and October 1969. The first Subcommittee meeting was attended by representatives of the following countries: Algeria, Canada, Colombia, Denmark, France, India, Israel, Japan, Nigeria, Switzerland, Tunisia, United Kingdom, and United States of America.

At this meeting the United States introduced a proposal which, if adopted, would have obligated Contracting States to extradite hijackers of commercial airliners to the State of registration of the hijacked aircraft. Such extradition would have been mandatory except in situations in which the country having custody of the hijacker was the country of his nationality. The philosophy underlying the U.S. proposal and all subsequent U.S. efforts was one which would require States that were parties to any anti-hijacking multilateral convention to adopt measures which would eliminate for the potential hijacker the inducement of a "safe haven." The United States failed to receive support for its proposal. In a letter addressed to Senator Fulbright, Chairman of the Senate Foreign Relations Committee, William B. Macomber, Jr., Assistant Secretary of State for Congressional Relations, explained:

During the period February 10 through 21, 1969, a 13-nation Subcommittee of the Legal Committee of ICAO met on the subject of the unlawful seizure of aircraft.

There was a fundamental difference of view on the substantive issue of how to deter hijacking through an international convention. The majority of the Subcommittee believed that hijacking should be made punishable but that the punishment should be left to normal extradition and prosecution practice. A small minority in the Subcommittee (led by the United States) believed that a new convention should contain its own special provisions for extradition of hijackers, exclude political motivations of the hijacker from consideration in the decision whether to extradite or prosecute, and permit refusal of extradition under the convention only where the State requesting it was considered to be doing so with

political motivations. The minority proposals would also provide that if extradition were refused because of political motivations of the State seeking extradition, the country where the hijacker was found would be obliged to refer the case to its local prosecuting authorities.

The United States received no support for its original proposal calling for an unqualified obligation to extradite. Only one country (Colombia) supported the United States proposal that hijacking should not itself be considered a political offense for purposes of extradition, and only two countries (Colombia and Nigeria) supported the United States on the proposal to create a new independent basis for extradition, rather than leave it to existing law and treaties.⁶⁰

The draft Agreement finally developed at this first Legal Subcommittee meeting was one which required Contracting States to punish or to extradite hijackers, but reserving to States their traditional discretion as to whether or not to initiate prosecutions or to extradite. The draft Agreement in the form agreed to by the first meeting of the Subcommittee was reviewed at a second meeting of the Subcommittee and finally by a meeting of the full Legal Committee in March 1970. The Legal Committee recommended that the ICAO Council convene a Diplomatic Conference for the purpose of preparing a Convention along the lines recommended by the Legal Subcommittee for States to sign and ratify. The draft Convention approved was substantially in the form adopted by the Legal Subcommittee.

The Diplomatic Conference was convened in The Hague in December 1970 and it produced a Convention which was approved without a dissenting vote by the 77-nation Conference (Algeria and Chile abstaining), but in a form that in the view of the United States was stronger than that approved by the Legal Committee (see Appendix A). In signing the Convention for the United States, Mr. John B. Rhinelander, Deputy Legal Adviser of the Department of State, said:

This Conference had before it the task of preparing an effective, widely acceptable international Convention; a Convention designed to ensure that all hijackers, wherever found,

⁶⁰ S. REP. No. 3, 91st Cong., 1st Sess., 31 (1969).

will be severely punished for an act which endangers the safety and lives of all passengers and crew aboard. . . .

Our Delegation believes this diplomatic conference has achieved its objective, and that this result will be insured when states have ratified or acceded to the Convention and it has become widely accepted. . . .

The Convention provides that if a state does not extradite a hijacker, it will submit the case, without exception whatsoever, to its competent authorities for the purpose of prosecution. This obligation is emphatic, and applies whatever the motivation of the hijacker. . . .

The Convention provides hijacking will be subject to severe penalties in all states. . . .

The Convention provides for universal criminal jurisdiction over hijackers, wherever found, by obligating contracting states to establish criminal jurisdiction enabling each state to prosecute a hijacker if that state does not extradite him. This provision—akin to the response of states in prior years to the threat of piracy—is one of the most important features in the entire Convention, and was added at this Conference. For the first time, the hijackers will be subject to punishment regardless of where the hijacking took place. . . .

Finally, the Convention will facilitate extradition of hijackers between contracting states. . . .

In brief, this Convention deprives hijackers of asylum from prosecution. A hijacker will either be extradited for purposes of prosecution or prosecuted where found.⁶¹

The Convention was signed at The Hague by 50 of the 77 participants (see Appendix A). If ratified, or adhered to, by the nations of the world, this Convention will represent a significant step forward in the battle against hijacking.

The 1970 ICAO Assembly in Montreal: Resolutions and a Declaration

While this Convention represents substantial progress, much remains to be done. The diplomatic efforts designed to deter hijacking have concentrated on eliminating various "safe havens" for the hijackers. This is a deterrent concept. There is also the concept of prevention.

⁶¹ Dept. of State Press Release No. 352 (Dec. 16, 1970).

In early 1970, two European commercial aircraft carrying passengers were blown up.⁶² These incidents shocked and aroused the world community. No longer were attacks—hijacking or otherwise—on civil aviation merely the United States' problem. Eleven European nations called for an extraordinary and urgent meeting of the Assembly of the International Civil Aviation Organization.⁶³ The need for the meeting was best summarized in a July 3 News Release of the International Civil Aviation Organization:

Grim facts reveal the need for action. From the beginning of 1969 until the end of June 1970, there were 118 incidents of unlawful seizure of civil aircraft and 14 incidents of sabotage and armed attacks against civil aviation. These involved airlines of 47 nations around the world with more than 7,000 passengers representing 83 different nationalities. In this period, 96 people were killed and 57 injured as a result of such unlawful acts as "hijacking," sabotage and armed attacks. These facts emphasize that unlawful interference with civil aviation and its facilities is not the particular problem of any one nation or of any one region, but has exploded into a worldwide hazard to the safe development and growth of international civil aviation.

The meeting convened in Montreal in June 1970. The stated purpose for the assembly was—

Development of adequate security specifications and practices, for application by ICAO States in international civil aviation, aimed at the protection of air passengers, civil aviation personnel and civil aircraft by

- a) preventing criminal action of any kind that may endanger the safety of air transport; and
- b) consideration of arrangements under which those responsible for criminal actions endangering civil air transport can be brought to justice.⁶⁴

⁶² One was a Swissair aircraft destined for Tel Aviv which crashed after exploding, killing 47 persons. The other was an Austrian Airlines aircraft which, while damaged, managed to land safely at Frankfurt. For a report on the aftermath see *TIME*, March 9, 1970, at 26.

⁶³ Austria, Belgium, Denmark, the Federal Republic of Germany, Finland, and Kingdom of the Netherlands, Norway, Spain, Sweden, Switzerland, and the United Kingdom.

⁶⁴ ICAO Doc. 8895, Res. A/17 at 5.

Ninety-one of the one hundred and nineteen Member States of ICAO and twelve international organizations attended this Assembly as well as the U.S.S.R., which at that time was not a Member State but which subsequently joined the organization. The work of the Assembly focused on consideration of three areas—the development of security responsibility for international airports; preventive security measures for use against hijacking, sabotage, and armed attacks against civil aviation and its facilities; and, finally, the possibility of the need for international treaties to deal with these problem areas. The Assembly was generally considered a success and was marked by an atmosphere of world-wide cooperation. The United States played a leading role at this meeting which produced resolutions calling on States to take the following actions:

SECURITY MEASURES

a) Unlawful Seizure of Civil Aircraft

- i) Development and implementation of detection system and procedures for use against 'hijackers,' and for weapons. These range from highly sophisticated technological detection apparatus, to training of aviation industry personnel in the basic psychlogical behavior characteristics of 'hijackers,' etc.
- ii) Development and implementation of measures to be taken by aircraft crew in flight and ground-based facilities during an act of unlawful seizure.
- iii) Development and implementation of measures to be taken on the ground during an act of unlawful seizure, *i.e.*, when seized aircraft lands in transit for fuel, etc.
- iv) Development and implementation of adequate announcement in airport areas to warn and discourage potential 'hijackers.'
- v) Development of cooperation with public information media to warn and discourage potential perpetrators from unlawful acts against civil aviation.

b) Sabotage

- i) Development and implementation of adequate systems and procedures for detecting explosive devices in air-mail, air cargo and passenger baggage, and their disposal when found.

- ii) Development and implementation of adequate protection of 'clean' mail, cargo and baggage throughout process from inspection to delivery aboard aircraft.
 - iii) Development and implementation of adequate inspection and protection of aircraft on the ground, as well as vital ground-based facilities used for flight guidance and control operations.
 - iv) Development and implementation of adequate security isolation areas at airports for aircraft in high risk situations.
 - v) Development and implementation of adequate security clearance and identification of air transport industry personnel in airport areas.
 - vi) Development and implementation of adequate areas and procedures for isolating transit passengers from airport visitors, and incoming and departing passengers, in order to minimize certain possible risks.
 - vii) Development and implementation of adequate emergency measures to be taken in case of an explosion occurring in an aircraft, either in flight or on the ground, by flight crew, air traffic controllers, airport authorities, etc.
- c) *Armed Attacks*
- i) Development and implementation of adequate surveillance systems and procedures over airport area, airport perimeter, and surrounding area.
 - ii) Development and implementation of adequate physical protection for passengers and aircraft on the ground, during take-off from runways, and during flight approach and landing operations.
 - iii) Development and implementation of adequate high-security isolation areas for passengers and aircraft on the ground, in the case of high-risk situations.
 - iv) Development and implementation of strengthened airport security systems and guard personnel, *i.e.*, surveillance, monitoring, electrical fencing, armed patrols, etc.

LEGAL ACTION

- i) Development of a special international treaty on unlawful interference with civil aviation, dealing with sab-

otage and other violent unlawful acts. This has been stressed as urgent, with draft treaty to be prepared by the ICAO Legal Committee in late 1970, for a Diplomatic Conference in mid-1971 to bring it to conclusion.

- ii) Early ratification of ICAO treaty on Unlawful Seizure, which is now scheduled for preparation by a Diplomatic Conference in December at The Hague. This treaty calls for return of aircraft to control of its commander, assistance to passengers and crew for continuation of their journey, and the apprehension, prosecution or extradition of the 'hijacker.'
- iii) Enactment of national legislation in all States, where such legislation does not yet exist, to apply severe penalties for the unlawful seizure of aircraft and other forms of unlawful interference with international civil aviation and its facilities.

Finally, the Assembly adopted a declaration by which it—

CONDEMNNS all acts of violence which may be directed against aircraft, aircraft crews and passengers engaged in international civil air transport;

CONDEMNNS all acts of violence which may be directed against civil aviation personnel, civil airports and other facilities used by international civil air transport;

URGENTLY CALLS UPON States not to have recourse, under any circumstances, to acts of violence directed against international civil air transport and airports and other facilities serving such transport;

URGENTLY CALLS UPON States, pending the coming into force of appropriate international conventions, to take effective measures to deter and prevent such acts and to ensure, in accordance with their national laws, the prosecution of those who commit such acts.

SOLEMNLY
(1) Deplores acts which undermine the confi-

- dence placed in air transport by the peoples of the world.
- (2) Expresses regret for the loss of life and injury and damage to important economic resources caused by such acts.
 - (3) Condemns all acts of violence which may be directed against aircraft, crews and passengers engaged in, and against civil aviation personnel, civil airports and other facilities used by, international civil air transport.
 - (4) Recognizes the urgent need for a consensus among States in order to secure widespread international cooperation in the interests of the safety of international civil air transport.
 - (5) Requests concerted action on the part of States toward suppressing all acts which jeopardize the safe and orderly development of international civil air transport.
 - (6) Requests application, as soon as possible, of the decisions and recommendations of this Assembly so as to prevent and deter such acts.⁶⁵

With the collective opinion apparent in these resolutions, it appears that the world community was finally mobilizing its forces to combat aircraft hijacking and other acts of unlawful interference against civil aviation and the facilities used by civil aviation.

Proposals to Counteract International Blackmail

Two months after the close of the meeting, however, new terror was injected into the aviation atmosphere—hijacking for purposes of international blackmail. As pointed out earlier in discussing the United States' response to the hijacking problem, in early September 1970 four commercial jet airlines and their passengers were hijacked to the Mid-East. The world waited anxiously for days to see whether both the hostage passengers and aircraft would survive. The passengers were eventually

⁶⁵ July 3, 1970 News Release of the International Civil Aviation Organization. For the complete texts of Resolutions passed by the Assembly see ICAO Doc. 8895 Res. A/17.

released. It became clear to the United States that more was needed for effective world action than international conventions calling on States to punish hijackers and saboteurs. What was also needed, particularly in cases involving hijacking for international blackmail purposes, was an international response which would impose sanctions against States which did not take action to punish the perpetrators of such acts.

In late September 1970, in response to a Resolution of the Extraordinary Assembly of ICAO,⁶⁶ the ICAO Legal Committee met in London for the purpose of drafting a Convention dealing with acts of unlawful interference with civil aviation and its facilities other than acts of unlawful seizure of aircraft. This meeting was scheduled to last for approximately two weeks, but was dramatically extended as a result of President Nixon's decision to move forcefully on all fronts to combat the latest series of outrages committed against international civil aviation.⁶⁷ At the request of the United States, a Special Meeting of the Council of the International Civil Aviation Organization was convened in Montreal on September 18, 1970. The United States placed before the Council the following draft Resolution:

THE COUNCIL,

FINDING that a heightened threat to the safety and security of international civil air transport exists as a result of acts of unlawful seizure of aircraft involving the detention for blackmail purposes of passengers, crew and aircraft contrary to Article II of the Tokyo Convention (including the destruction of such aircraft) and the failure to extradite or prosecute persons responsible for such acts;

RECOGNIZING that Contracting States to the Convention on International Civil Aviation have obligated themselves to ensure the safe and orderly growth of international civil aviation throughout the world;

CALLS UPON Contracting States in order to ensure the safety and security of international civil air transport to take joint action to suspend all international civil air transport services to and from any State which, after the unlawful seizure of an aircraft, detains passengers, crew and aircraft contrary to the Tokyo Convention (including the destruction

⁶⁶ ICAO Doc. 8895 Res. A/17 at 30.

⁶⁷ *Supra* note 45.

of such aircraft) or any State which fails to extradite or prosecute persons responsible for such acts of unlawful seizure;

DIRECTS the Legal Committee to extend its Eighteenth Session in order to draw up an international convention providing for joint action by States to suspend all international civil air transport services to and from any State which, after the unlawful seizure of an aircraft, detains passengers, crew and aircraft contrary to Article II of the Tokyo Convention (including the destruction of such aircraft) or any State which fails to extradite or prosecute persons responsible for such acts of unlawful seizure.⁶⁸

In introducing the United States' proposal, the following statement in explanation of the United States' position was made:

The existing draft convention on unlawful seizure of aircraft obligates states to extradite or prosecute all persons responsible for unlawful seizure of aircraft. We expect that draft will be strengthened, signed at the diplomatic conference in The Hague this December, and promptly ratified by States. In this connection, the Montreal Declaration adopted by the Assembly this past June deals directly and forcibly with this point. Its text:

'URGENTLY CALLS UPON STATES, pending the coming into force of appropriate international conventions, to take effective measures to deter and prevent such acts (of violence directed against international civil air transport and airports and other facilities serving such transport) and to ensure, in accordance with their national laws, the prosecution of those who commit such acts. . . .'

It is essential that the basic principles set forth in the Tokyo Convention and the draft Unlawful Seizure Convention be applied universally to be effective. However, there are at the present time no agreed-upon sanctions to enforce them. Further efforts by ICAO are now plainly required.

That is why President Nixon called upon the international community 'to take joint action to suspend airline services with those countries which refuse to punish or extradite hijackers involved in international blackmail.' That is why he directed the Secretary of State of the United States to ask that this session be convened.

⁶⁸ Dept. of State Bulletin, Vol. LXIII, No. 1634, Oct. 19, 1970, at 453.

The United States believes that the principal action of this meeting should be the adoption of a resolution establishing the basis for application of sanctions where appropriate and has presented for your consideration a resolution for this purpose.⁶⁹

While the United States' Resolution was not adopted, the Council did adopt the following Resolution:

THE COUNCIL,

Finding that a heightened threat to the safety and security of international civil air transport exists as a result of acts of unlawful seizure of aircraft involving the detention of passengers, crew and aircraft contrary to the principles of Article II of the Tokyo Convention, for international blackmail purposes, and the destruction of such aircraft;

Recognizing that Contracting States to the Convention on International Civil Aviation have obligated themselves to ensure the safe and orderly growth of international civil aviation throughout the world;

Calls upon Contracting States, in order to ensure the safety and security of international civil air transport, upon request of a Contracting State to consult together immediately with a view to deciding what joint action should be undertaken, in accordance with international law, without excluding measures such as the suspension of international civil air transport services to and from any State which after the unlawful seizure of an aircraft, detains passengers, crew or aircraft contrary to the principles of Article II of the Tokyo Convention, for international blackmail purposes, or any State which, contrary to the principles of Articles 7 and 8 of the Draft Convention on Unlawful Seizure of Aircraft, fails to extradite or prosecute persons committing acts of unlawful seizure for international blackmail purposes;

Directs the Legal Committee to consider during its Eighteenth Session, if necessary by extension of the session, an international convention or other international instruments:

- i) to give effect to the purposes set out in the preceding paragraph;
- ii) to provide for joint action by States to take such measures

⁶⁹ *Id.* at 451.

as may be appropriate in other cases of unlawful seizure;
and

- iii) to provide for amendment of bilateral air transport agreements of contracting parties to remove all doubt concerning the authority to join in taking such action against any State.⁷⁰

As a result of an action by the Council in passing the above-cited Resolution, the ICAO Legal Committee Meeting in London was extended an additional ten days. The Legal Committee was successful in drafting the text of a proposed convention on unlawful interference with civil aviation and its facilities which would call upon Contracting States to make the following offenses punishable by severe penalties:

- (1) intentionally committing an armed attack against the life of a person on board an aircraft in flight; or
- (2) intentionally destroying or seriously damaging an aircraft in service; or
- (3) intentionally damaging an aircraft in service with the result of endangering its safety in flight; or
- (4) intentionally destroying or damaging air navigation facilities with the result of endangering the safety of aircraft in flight; or
- (5) intentionally committing an act of interference with the operation of aeronautical communications with the result of endangering the safety of aircraft in flight; or
- (6) intentionally placing on an aircraft by mail or dispatching of cargo or any other means whatsoever a device or substance likely to destroy or seriously damage the aircraft in service or endanger its safety in flight; or
- (7) committing any other act or omission with the intention of endangering the safety of aircraft in flight; or
- (8) attempting or conspiring to commit any of the above acts or omissions; or
- (9) being an accomplice of a person who commits or attempts to commit any of the above acts or omissions.⁷¹

⁷⁰ *Id.* at 453.

⁷¹ ICAO Doc. 8910, LC/163, Part 11, Annex, Art. 1,

In addition, the draft provisionally incorporated many of the Articles of the then ICAO Legal Committee draft Convention on Unlawful Seizure which was subsequently considered at the Diplomatic Conference in The Hague in December, 1970. Included among these Articles are those calling upon States either to extradite alleged offenders or to submit the case to their competent authorities for a decision whether to prosecute him. The Council of ICAO has called for a diplomatic conference in September, 1971, to consider this draft Convention.

At the same Session of the Legal Committee the United States also tabled a draft "Convention Regarding the Safety and Security of International Civil Air Transport Services." Basically, this Convention would establish machinery for enabling States to take joint action against another State in cases of hijackings for international blackmail purposes. While the text of this Convention was not discussed in detail, the Committee did discuss a number of legal issues raised by such a Convention.⁷²

The Canadian Government also introduced a proposal calling for the inclusion in bilateral air transport agreements of a provision authorizing States party to the bilateral agreements to take certain action in cases of violation of the provisions of Article II of the Tokyo Convention.

The Legal Committee recommended to the Council the establishment of a special Legal Subcommittee which will meet to consider further the question of sanctions and the United States' and Canadian proposals. Such a meeting has now been scheduled for April, 1971.

Thus, in the past decade the international aviation community has moved sometimes with great urgency and sometimes with tantalizing deliberateness to begin to form a body of international law designed to deter or punish persons who would bring disruptive violence into the arena of international civil aviation.

CONCLUSION

As the world spins into another decade, the fight to eradicate the disease of hijacking in all its forms and with its varied motivations continues. The United Nations continues to focus world

⁷² ICAO Doc. 8910, LC/163, Part III, Annex 2,

opinion on condemning acts of hijacking. The International Civil Aviation Organization, through its technical and legal committees, continues to work to develop ways to combat the hijacker and saboteur. In January, 1971, at the invitation of the United States Government, over seventy nations from all over the world met in Washington, D. C. for a three-day Conference to exchange information and ideas on how to stop hijacking and sabotage of civil aircraft. The nations of the world are beginning to enact specific legislation making acts of hijacking a crime under their national law. If civil aviation is to continue to be a force for world peace and understanding, if it is to remain the most effective means of transportation between peoples and nations yet devised by man, if the traveling public is again to board aircraft with no greater concern than its choice between coffee, tea, or milk, then these efforts must continue. Hijacking must be stopped and, to do so, the genius of man must continue to work to develop methods whereby the would-be hijacker can be prevented from committing the crime, and the will of the nations of the world must combine to deprive successful hijackers of any "safe haven." To the objectives of deterrence, prevention, and ensurement of punishment must be added perseverance and vigilance.

Appendix A
CONVENTION FOR THE SUPPRESSION OF UNLAWFUL
SEIZURE OF AIRCRAFT

[Following is the text of the Multilateral Hijacking Convention approved by a 77-nation diplomatic conference held at The Hague, December 1-16, 1970 and signed by the U.S. on December 16 (Press Release Number 352). On the same date, forty-eight other countries also signed the Convention.]

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;

HAVE AGREED AS FOLLOWS:

Article 1

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 (hereinafter referred to as "the offence").

Article 2

Each Contracting State undertakes to make the offence punishable by severe penalties.

Article 3

1. For the purpose of this 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 any such

door is opened for disembarkation. In the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board.

2. This Convention shall not apply to aircraft used in military, customs or police services.

3. 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 shall be immaterial whether the aircraft is engaged in an international or domestic flight.

4. In the cases mentioned in Article 5, this Convention shall not apply if the place of take-off and the place of actual landing of the aircraft on board which the offence is committed are situated within the territory of the same State where that State is one of these referred to in that Article.

5. Notwithstanding paragraphs 3 and 4 of this Article, Articles 6, 7, 8 and 10 shall apply whatever the place of take-off or the place of actual landing of the aircraft, if the offender or the alleged offender is found in the territory of a State other than the State of registration of that aircraft.

Article 4

1. Each Contracting State shall likewise 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.

2. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offence in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to any of the States mentioned in paragraph 1 of this Article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 5

The Contracting States which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registration for the purpose of this Convention and shall give notice thereof to the International Civil Aviation Organization which shall communicate the notice to all States parties to this Convention.

Article 6

1. Upon being satisfied that the circumstances so warrant, any Contracting State in the territory of which the offender or the alleged offender is present, shall take him into custody or take other measures to ensure his presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary enquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.

4. When a State, pursuant to this Article, has taken a person into custody, it shall immediately notify the State of registration of the aircraft, the State mentioned in Article 4, paragraph 1 (c), the State of nationality of the detained person and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

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 pur-

pose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

Article 8

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 State with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offence. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. Contracting States which do not make extradition conditional on the existence of a treaty shall recognize the offence as an extraditable offence between themselves subject to the conditions provided by the law of the requested State.

4. The offence 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, paragraph 1.

Article 9

1. When any of the acts mentioned in Article 1 (a) has occurred or is about to occur, Contracting States shall take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft.

2. In the cases contemplated by the preceding paragraph, any Contracting State in which the aircraft or its passengers or crew are present shall facilitate the continuation of the journey of the passengers and crew as soon as practicable, and shall without delay return the aircraft and its cargo to the persons lawfully entitled to possession.

Article 10

1. Contracting States shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offence and other acts mentioned in Article 4. The law of the State requested shall apply in all cases.

2. The provisions of paragraph 1 of this Article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

Article 11

Each Contracting State shall in accordance with its national law report to the Council of the International Civil Aviation Organization as promptly as possible any relevant information in its possession concerning:

- (a) the circumstances of the offence;
- (b) the action taken pursuant to Article 9;
- (c) the measures taken in relation to the offender or the alleged offender, and, in particular, the results of any extradition proceedings or other legal proceedings.

Article 12

1. 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 the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the statute of that court.

2. Each State may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other Contracting States shall not be bound by the preceding paragraph with respect to any Contracting States having made such a reservation.

3. Any Contracting State having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary Governments.

Article 13

1. This Convention shall be open for signature at The Hague on 16 December 1970, by States participating in the International Conference on Air Law held at The Hague from 1 to 16 December 1970 (hereinafter referred to as The Hague Conference). After 31 December 1970, the Convention shall be open to all States for signature in Moscow, London and Washington. Any State which does not sign

this Convention before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.

2. This Convention shall be subject to ratification by the signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, which are hereby designated the Depositary Governments.

3. This Convention shall enter into force thirty days following the date of the deposit of instruments of ratification by ten States signatory to this Convention which participated in The Hague Conference.

4. For other States, this Convention shall enter into force on the date of entry into force of this Convention in accordance with paragraph 3 of this Article, or thirty days following the date of deposit of their instruments of ratification or accession, whichever is later.

5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of entry into force of this Convention and other notices.

6. As soon as this Convention comes into force, it shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

Article 14

1. Any Contracting State may denounce this Convention by written notification to the Depositary Governments.

2. Denunciation shall take effect six months following the date on which notification is received by the Depositary Governments.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.

DONE at The Hague, this Sixteenth day of December, One Thousand Nine Hundred and Seventy, in three originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish languages.

Appendix B

A CONVENTION REGARDING THE SAFETY AND SECURITY
OF INTERNATIONAL CIVIL AIR TRANSPORT SERVICES⁷³

THE PARTIES TO THIS CONVENTION

RECALLING that the Contracting States to the Convention on International Civil Aviation (the Chicago Convention) have obligated themselves to ensure the safe and orderly growth of international civil aviation throughout the world;

NOTING the Convention on Offences and Certain Other Acts Committed on Board Aircraft (the Tokyo Convention), the Convention on the Unlawful Seizure of Aircraft (the Unlawful Seizure Convention) and the Convention on the Unlawful Interference with Aircraft (the Unlawful Interference Convention);

FINDING that a heightened threat to the safety and security of all international civil air transport exists as a result of acts of unlawful seizure of air craft involving the detention of passengers, crew and aircraft, contrary to the principles of Article 11 of the Tokyo Convention, for international blackmail purposes, and the destruction of such aircraft;

FINDING further that the failure of any State to take into custody and thereafter to extradite or prosecute, contrary to the principles of the Unlawful Seizure Convention or the Unlawful Interference Convention, any person who commits an act of unlawful seizure for international blackmail purposes or any person who commits an act of unlawful interference with an aircraft which results in damage to the aircraft, or death or physical injury to passengers or crew, encourages similar unlawful acts and endangers the safety and security of all international civil air transport; and

CONCLUDING that the threat of unlawful acts of seizure and interference with civil aviation is worldwide and that consultations among States and joint action by States is required to prevent such acts and secure the safety and security of passengers, crew and aircraft;

⁷³ *Id.*

HAVE AGREED AS FOLLOWS:

Article 1

Definitions

For purposes of this Convention:

- (a) the term "interested State" shall mean—
 - (i) in the event of an unlawful seizure of a civil aircraft, the State of registration of the aircraft and any State whose nationals are on board such aircraft; and
 - (ii) in the event of an unlawful interference with a civil aircraft, the State of registration of such aircraft, the State within the jurisdiction of which such unlawful interference took place, and any State whose nationals are on board such aircraft; and
- (b) the term "air service State" shall mean any State operating scheduled or (significant non-scheduled) international civil air service to or from a State alleged or determined to be in default under Article 2 or 3 of this Convention, whether or not such State is a party to this Convention.

Article 2

Determination of Detention

- A. Whenever an interested State has reason to believe that an unlawful seizure of a civil aircraft has occurred and that such aircraft, its passengers or crew are being detained, contrary to the principles of Article 11 of the Tokyo Convention, within the territory of another State for international blackmail purposes, it may—
 - (1) notify such other State of the reasons for its belief and that it will request consultations for the purpose of obtaining a determination of its allegations in this regard unless all passengers and crew have been permitted to continue on their journey and the aircraft returned to the person lawfully entitled to its possession within twenty-four hours; and
 - (2) notify all States which it believes are interested States or air service States of its notification given pursuant to subparagraph (1) of this Article and that it requests consultations pursuant to this Convention for the purpose of obtaining a determination of its allegations.
- B. Consultation shall be held at (place) and shall begin not earlier than twenty-four hours and not later than seventy-two hours fol-

lowing the notice given pursuant to subparagraph A(2) of this Article.

- C. All interested States and air service States shall be entitled to participate and vote in consultations requested pursuant to this Article 2. A finding that all passengers and crew have not been permitted to continue on their journey or that the aircraft has not been returned to the person lawfully entitled to its possession shall be made by majority vote of the States voting. Unless two-third majority of the States voting decide otherwise, such a finding shall be considered to establish unlawful detention for international blackmail purposes contrary to the provisions of Article 11 of the Tokyo Convention (i.e., a determination of default).

Article 3

Determination Relating to Custody, Extradition or Prosecution

- A. Whenever an interested State has reason to believe that a person who has committed either (a) an unlawful seizure of a civil aircraft for international blackmail purposes or (b) an unlawful interference with a civil aircraft that resulted in damage to the aircraft or death or physical injury to a passenger or member of the crew is within the territory of another State, and that such other State has failed (i) to take such person into immediate custody in accordance with the principles of the unlawful seizure convention or the unlawful interference convention or (ii) thereafter to extradite or prosecute such person in accordance with the principles of such conventions, it may—
- (1) notify such other State that it is requesting a determination, pursuant to this Convention, of its allegations in this regard;
 - (2) in accordance with the attached Annex to this Convention, request the President of the International Court of Justice to establish a five-member inquiry commission to reach findings and conclusions with respect to the allegation; and
 - (3) notify all States which it believes are interested States or air service States of its request for the establishment of an inquiry commission.
- B. The findings and conclusions of the inquiry commission shall be final for purposes of Article 4 of this Convention.

Article 4

Decisions on Joint Action

- A. In the event of a determination of default pursuant to Article 2, States participating in consultations shall decide as soon as possible thereafter in accordance with this Article what joint action, if any, should be taken in furtherance of the safety and security of international air service.
- B. In the event the findings and conclusions of the inquiry commission determine a default of a State pursuant to Article 3, then any interested State or air service State may give notice to other such States that it requests consultations to decide what joint action, if any, should be taken. Consultations shall begin at (place) within ten days after such notice is given. All interested States and air service States shall be entitled to participate in such consultations.
- C. Joint action taken pursuant to this Article may include:
- (1) the suspension by all air service States of authority for any carrier to operate international civil air service directly or indirectly to and from the State determined to be in default; and
 - (2) such other measures to be taken by interested States or air service States that are intended to assure the safety and security of international civil air service to and from the State determined to be in default.
- D. Each air service State shall be entitled to participate in and vote on decisions whether to take joint action referred to in subparagraph C(1) of this Article, and each air service State and each interested State shall be entitled to participate in and vote on decisions referred to in subparagraph C(2) of this Article.
- E. No air service State shall be required to participate in joint action referred to in subparagraph C(1) of this Article unless a majority of air service States present and voting agree that a particular joint action referred to therein is appropriate; and no interested State or air service State shall be required to participate in joint action referred to in subparagraph C(2) of this Article unless a majority of such States present and voting agree that a particular joint action referred to therein is appropriate.
- F. A decision to take joint action made pursuant to subparagraph C(1) of this Article 4 shall be binding on all air service States, and

a decision to take joint action made pursuant to subparagraph C(2) of this Article shall be binding on all air service States and interested States whether or not such a State actually participated in or voted in favour of the joint action, except that such a decision shall be recommendatory with respect to any interested State or air service State that is not a party to this Convention.

Article 5

Modification, Suspension or Termination

- A. In the event of a decision to take joint action pursuant to Article 4, the State found in default may request consultations for the purpose of modification, suspension or termination of the joint action on the grounds that such action is no longer appropriate or necessary.
- B. The States entitled to participate in consultations shall meet at (place) as soon as practicable and shall decide whether the joint action should be modified, suspended or terminated. Participation and voting during such consultations shall be determined as provided in Article 4.

Article 6

General Provisions

- A. A State which is entitled to participate in consultations at the time of the original request for consultations under Article 2, may continue to participate and vote even though the basis for its participation has ceased to exist (such as the release of its nationals from detention).
- B. Copies of notices, determinations, findings or decisions made pursuant to this Convention shall be transmitted to all States parties to the Chicago Convention.
- C. The failure of one or more interested State or air service State to participate in consultations shall not affect the validity of any determinations or decisions made pursuant to this Convention.
- D. A State alleged to be in default may participate in consultations and vote in determinations made under Article 2. A State determined to be in default may submit appropriate documentation and make an oral statement to the States participating in consultations, but shall not be entitled to participate in any deliberation or vote, pursuant to Articles 4 or 5 of this Convention.

Article 7

Other International Agreements

Suspension of authority for any carrier to operate international civil air transport services by any air service State pursuant to a decision calling for joint action under Article 4, or any other joint measures taken by interested States or air service States in accordance with a decision made under Article 4, shall be considered consistent with the object and purpose of the obligations of States parties to the Chicago Convention and shall not be considered inconsistent with any bilateral air transport agreement existing between States parties to the Chicago Convention. Contracting States undertake not to include any provisions inconsistent with the obligations of this Convention in any bilateral air transport agreement to be concluded by them.

Article 8

Judicial or Arbitral Review

(To be based on Article 24 of Tokyo Convention)

Article 9

Final Clauses

(To be discussed after agreement other articles)

ANNEX TO DRAFT CONVENTION

- A. Each State party to this Convention may nominate an expert to serve on an inquiry commission. The name of such expert shall be forwarded to the President of the International Court of Justice.
- B. Upon request of an interested State, the President of the International Court of Justice shall immediately nominate five experts from the list nominated by States to serve on the inquiry commission. If the President is prevented from acting or is a national of the State requesting establishment of the commission or the State against which allegations are brought, the Vice President shall make the nominations. If the latter is prevented from acting or is a national of one of such States, the nominations shall be made by the oldest member of the Court who is not a national of such State. If practicable, one member of the inquiry commission shall be a national of the State alleged to be in default, a second member shall be a national of an interested State or an air service State,

and three members one of whom shall serve as Chairman, shall be nationals of States not entitled to participate in the consultations under this Convention.

- C. The inquiry commission shall set its own rules of procedure. Its findings of facts and conclusions shall be made within thirty days of its establishment, or as soon thereafter as is practicable.
- D. The expenses of the inquiry commission shall be borne equally by States participating in consultations pursuant to Article 4.