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DRAFT CONVENTION ON OFFENCES AND CERTAIN
OTHER ACTS COMMITTED ON BOARD AIRCRAFT

Article 1

1. This Convention shall apply in respect of:

- 1) offences against penal laws;
- 2) acts which, whether or not they are an offence, may or do jeopardize the safety of the aircraft or persons or property therein or which jeopardize good order and discipline on board,

when such offences are committed or such acts are done by a person on board any aircraft registered in a Contracting State, while that aircraft is:

- a) in flight in the airspace of a State other than the State of registration of the aircraft; or
- b) in flight between two points of which at least one is outside the State of registration of the aircraft; or
- c) in flight between two points in the territory of the State of registration of the aircraft if a subsequent landing is made in another Contracting State with the said person still on board; or
- d) on the surface of the high seas or of any other area outside the territory of any State.

2. For the purposes of this Convention, and subject to the provisions of Article 5, an aircraft is considered to be in flight from the moment when power is applied for the purpose of take-off until the moment when the landing run ends.

3.
 - 1) This Convention shall be applicable only to civil aircraft, and shall not be applicable to State aircraft.
 - 2) Aircraft used in military, customs and police services shall be deemed to be State aircraft.

Article 2

1. The State of registration of the aircraft is competent to exercise jurisdiction over offences committed on board the aircraft.
2. Each Contracting State shall take such measures as may be necessary:
 - a) to establish its jurisdiction as the State of registration over offences committed on board aircraft registered in such State, and
 - b) with respect to offences committed on board aircraft registered in other States, to recognize the jurisdiction of the State of registration of the aircraft.
3. A Contracting State which is not the State of registration of the aircraft may not delay or interfere with the aircraft in order to exercise its criminal jurisdiction in respect of an offence committed on board the aircraft except in one of the following cases:
 - a) the offence has effect on the territory of such State;
 - b) the offence has been committed by or against a national of, or permanent resident of, such State;
 - c) the offence is against the national security of such State;
 - d) the offence consists of a breach of any rules or regulations relating to the flight or manoeuvre of aircraft in force in such State;
 - e) the exercise of jurisdiction is necessary to ensure the observance of any obligation of such State under an international agreement.
4. This article does not supersede any basis for criminal jurisdiction which a State might have incorporated into its national laws.

Article 3

1. Where a final judgment has been rendered by the competent authorities of one Contracting State in respect of a person for an offence, such person shall not be convicted in another Contracting State for the same act if he was acquitted, or if, in the case of a conviction, the punishment was remitted or fully carried out, or if the time for the carrying out of the punishment has expired.

2. The provisions of paragraph 1 of this article shall not apply if the person is a national or a permanent resident of the second State or if the act constituted an offence against the national security of such State, and its laws permit further trial.

3. Whenever, pursuant to the preceding paragraphs, a new punishment may be imposed by the competent authorities of another Contracting State, those authorities shall take into account the punishment or part of punishment already carried out in the first State.

Article 4

1. Following the commission by violence of any act of interference, seizure, or other wrongful exercise of control of an aircraft in flight or threat thereof, 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. Each Contracting State in which the aircraft lands after such act or threat shall take custody, in accordance with its own law, of the person committing such act or threat. The Contracting State taking custody of such person shall immediately notify the State of registration of the aircraft, and, where applicable, also the State over whose territory the said act or threat occurred, of such action.

2. Each Contracting State shall permit the passengers and crew of any aircraft which has landed under conditions contemplated in paragraph 1 of this Article to continue their journey as soon as practicable, and shall return the aircraft and its cargo to the persons lawfully entitled to possession.

Article 5

1. When the aircraft commander has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an act contemplated in Article 1, paragraph 1, 2), the aircraft commander may impose upon such person reasonable measures including restraint which are necessary:

- a) to protect the safety of the aircraft, or persons or property therein; or
- b) to maintain good order and discipline on board; or
- c) to enable him to deliver such person to competent authorities pursuant to the provisions of Article 6, paragraph 2.

2. The aircraft commander may require or authorize the assistance of other crew members and may request or authorize, but not require, the assistance of passengers to restrain any person whom he is entitled to restrain. Any crew member or passenger may also take reasonable preventive measures without such authorization when he has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft, or persons or property therein.

3. The powers conferred by this Article on the aircraft commander, other crew members and passengers as well as those conferred on the aircraft commander by Article 6 may be exercised with respect to an act contemplated in Article 1, paragraph 1, 2), when committed at any time from the moment when embarkation begins until the moment when disembarkation is completed. In the case of a forced landing outside an airport, such powers of the aircraft commander, crew members and passengers shall continue as to acts committed on board until competent authorities of the State of landing take over the responsibility for the aircraft, persons and property on board.

4. For the purposes of this Convention, the aircraft commander is the individual on board an aircraft who is responsible for the operation and safety of that aircraft.

Article 6

1. The aircraft commander may, in so far as it is necessary for the purposes of subparagraphs a) and b) of paragraph 1 of Article 5, disembark in the territory of any State in which the aircraft lands any person who he has reasonable grounds to believe has committed, or is about to commit, on board the aircraft an act contemplated in Article 1, paragraph 1, 2).

2. The aircraft commander may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person upon whom he has imposed measures of restraint pursuant to Article 5, if he has reasonable grounds to believe that such person has committed on board the aircraft an act which, in his opinion, is a serious offence according to the penal laws of the State of registration of the aircraft.

3. Measures of restraint imposed upon a person pursuant to Article 5 shall not be continued beyond any point at which the aircraft lands unless:

- a) such point is in the territory of a non-contracting State and its authorities refuse to permit disembarkation of the person concerned at such point;
- b) the aircraft makes a forced landing outside an airport and the aircraft commander is unable to deliver the person concerned to competent authorities; or
- c) such person agrees to onward carriage under restraint.

Article 7

1. The aircraft commander shall report to the authorities of the State in which he disembarks any person pursuant to the provisions of Article 6, paragraph 1, the fact of, and the reasons for, such disembarkation.
2. The aircraft commander shall transmit to the authorities to whom any suspected offender is delivered pursuant to the provisions of Article 6, paragraph 2, evidence and information which, in accordance with the law of the State of registration of the aircraft, are lawfully in his possession.

Article 8

The aircraft commander shall as soon as practicable, and if possible before landing in the territory of a State with a person on board who has been placed under restraint in accordance with the provisions of Article 5, notify the authorities of such State of the fact that a person on board is under restraint and of the reasons for such restraint.

Article 9

Neither the aircraft commander, another member of the crew, a passenger, the owner or operator of the aircraft nor the person on whose behalf the flight was performed, shall be liable on account of measures or actions taken in accordance with the provisions of this Convention unless he is the person who has committed the offence or act involved.

Article 10

1. Any Contracting State shall allow the commander of an aircraft registered in another Contracting State to disembark any person pursuant to Article 6, paragraph 1.
2. Any Contracting State shall take custody of any person whom the aircraft commander delivers pursuant to Article 6, paragraph 2, upon being satisfied that the circumstances warrant taking such person into custody and the Contracting State assumes such obligation pursuant to its regulations and laws. The State taking custody shall promptly notify any State in whose airspace the offence was committed, the State of registration of the aircraft and the State of nationality of the suspected offender of the nature of the alleged offence and the fact that the suspected offender is in custody.
3. The Contracting State which takes custody of a person pursuant to paragraph 2 of this Article shall immediately make a preliminary investigation in order to establish whether any offence has been committed, and shall report its findings and such statements or other evidence as it may obtain to any State in whose airspace the offence was committed, the State of registration of the aircraft and the State of nationality of the person concerned.

4. On the expiry of a period, fixed by the law of the State which detains the person concerned, which period shall run from his disembarkation, such person shall be set at liberty unless within such period:

- a) the competent authorities of that State have notified him that he is charged with an offence under its law and of the nature of that offence, or
- b) some other State has made a demand for extradition justifying measures of arrest.

5. A person who has been disembarked pursuant to Article 6, paragraph 1, shall, unless he is detained by virtue of penal or extradition measures, be at liberty as soon as practicable to continue to his original destination or to any other destination of his choice.

6. Without prejudice to the preceding paragraph, the State in whose territory a person has been disembarked pursuant to Article 6, paragraph 1, may, if that person is not a national or permanent resident of that State, deport that person to the territory of the State of which he is a national or permanent resident, or, if there is no such State, to the territory of the State in which he began his journey by air.

7. Neither disembarkation nor delivery of the person concerned shall be considered as admission to the territory for the purposes of the laws of the Contracting States relating to entry or admission of aliens.

Article 11

In taking any measures for investigation or arrest or otherwise exercising jurisdiction in connection with any offence committed on board an aircraft the Contracting States shall pay due regard to the safety and other interests of air navigation and shall so act as to avoid unnecessary delay of the aircraft, passengers, crew or cargo.

Article 12

1. Offences committed on aircraft registered in a Contracting State shall be treated, for the purpose of extradition treaties, as if they had been committed also in the territory of the State of registration of the aircraft.

2. Subject to the provisions of paragraph 1 of this Article, nothing in this Convention shall be deemed to create an obligation to grant extradition.

- 7 -

REPORT ON THE DRAFT CONVENTION

INTRODUCTION

1. The Legal Committee at its Twelfth Session at Munich in August-September 1959 had prepared a draft convention on offences and certain other acts committed on board aircraft. In view of the complexity of the problems related to that subject, the Committee regarded that draft as only a provisional one and requested the Council to circulate the draft to Contracting States and international organizations for the purpose of obtaining their comments. The action requested was taken by the Council and comments were received on the Munich draft convention from several States and international organizations. Those comments were considered by a Subcommittee of the Legal Committee at Montreal in March-April 1962.

2. The main questions which arose from the comments of States and international organizations on the Munich draft convention and from the report of the Subcommittee above mentioned, as well as from proposals submitted by members of the Committee or observers during the course of the Fourteenth Session are indicated below together with the decisions of the Committee in relation to those questions.

SCOPE OF THE CONVENTION

Subject Matter

3. The draft convention prepared by the Committee during its Twelfth Session at Munich dealt with problems relating to the occurrence on board of offences and certain acts prejudicial to the safety of the aircraft or persons or property thereon or to good order and discipline on board. That draft also dealt with a closely related question, namely, the powers of the aircraft commander in respect of offences and dangerous acts on board. During the course of the present session a proposal was made to the effect that the scope of the convention should be reduced so as to exclude the treatment of problems relating to offences per se, committed on board, and to deal only with such acts, whether or not they constituted an offence, as were prejudicial to the safety of the aircraft or persons or property thereon or to good order and discipline on board. It was argued in support of the proposal that a convention limited to such prejudicial acts committed on board and to the powers of the aircraft commander with respect to such acts would correspond more closely to the objectives of ICAO, specifically, safety of air navigation.

The proposal was opposed on the ground, inter alia, that there was a need for the establishment on an international basis, of rules concerning offences committed on board aircraft and a need also for the unification of national rules on the subject.⁽¹⁾ After discussion, the Committee rejected the proposal (2 votes for and 22 against).

Territorial Application

4. The territorial application of the draft convention is specified in Article 1, paragraph 1. The Convention will apply if the offence or other act concerned takes place on board whilst the aircraft is:

- (a) in flight in the airspace of a State other than the State of registration of the aircraft; or
- (b) in flight between two points of which at least one is outside the State of registration of the aircraft; or
- (c) in flight between two points in the territory of the State of registration of the aircraft if a subsequent landing is made in another Contracting State with the offender still on board; or
- (d) on the surface of the high seas or of any other area outside the territory of any State.

4.1 It will be observed from the foregoing that if the offence or other act concerned takes place when the aircraft is in flight in the airspace over the high seas or in the airspace over any other area outside the territory of any State, then

- the Convention will apply if the flight is one described in (b) above, namely, between two points of which at least one is outside the State of registration of the aircraft, and

(1) The Report of the Committee at its Twelfth Session contained the following statement on this point: "The Committee noted the view of the Subcommittee that there is a need for an international agreement on the subject of offences committed on aircraft, and the reasons adduced therefor in its report. The Committee agreed with this view, taking into account, in particular, the disparity in the provisions of various national laws related to such matters, the lack in several instances of a law equivalent in the case of aircraft to the rule of international law relating to the application of the law of the flag in the case of ships, and the desirability of unification of certain rules on the subject."

- the Convention will apply if the flight is covered by (c) above, namely, if the flight is between two points in the territory of the State of registration of the aircraft,⁽¹⁾ and if a subsequent landing is made in another Contracting State with the person who committed the offence or other act still on board, but

- the Convention will not apply if the flight is between two points in the territory of the State of registration of the aircraft¹ and if the aircraft does not subsequently land in another Contracting State with the person concerned still on board.

Periods of Application

5. When the aircraft is in the territory of any State, the Convention will apply only if the offence or other act is committed on board within a period of time specified in the Convention, namely, the period during which the aircraft is "in flight". This period is defined in Article 1, paragraph 2, as lasting "from the moment when power is applied for the purpose of take-off until the moment when the landing run ends". Outside the territory of any State, the Convention will apply if the aircraft is on the surface, even though not "in flight": see Article 1, paragraph 1(d). As regards flight in the airspace above such surface, see paragraph 4.1 above.

5.1 However, the period of application of the provisions relating to the exercise of powers by the aircraft commander and others with respect to acts jeopardizing safety of the aircraft etc., as specified in Articles 5 and 6 of the Convention, is somewhat longer than when the aircraft is "in flight": see Article 5, paragraph 3, which states in effect that the powers conferred by the Convention on the aircraft commander, other crew members and passengers may be exercised if the act is committed at any time from the moment when embarkation begins until the moment when disembarkation is completed. In the case of a forced landing outside an airport, such powers continue until competent authorities take over responsibility for the aircraft and the persons and property on board.

(1)

The assumption for the present example is that in the course of its flight between those two points the aircraft was flying over the high sea or over some other area outside the territory of any State.

Civil Aircraft

6. The Convention is applicable only to civil aircraft and not to State aircraft. The statement in paragraph 3(2) of Article 1 of the Convention that "aircraft used in military, customs and police services shall be deemed to be State aircraft" follows the provisions of Article 3(b) of the Convention on International Civil Aviation, (Chicago, 1944).

JURISDICTIONState of Registration

7. Paragraph 1 of Article 2 of the draft convention states the uniform rule that: "The State of registration of the aircraft is competent to exercise jurisdiction over offences committed on board the aircraft". In connection with that rule the two following questions were discussed:

- (a) whether a State becoming a party to the Convention will be bound to take such measures as may be necessary to establish its jurisdiction over offences committed on board aircraft registered in that State;
- (b) whether a State party to the proposed Convention undertakes to try persons who might commit offences on aircraft registered in that State.

While the second of the above two questions was answered in the negative, the Committee, by majority, answered the first question in the affirmative. In addition it decided that a State becoming a party to the Convention must also take measures to recognize the jurisdiction of other States to apply their penal laws with respect to offences committed on board aircraft registered in such States.

Other States

8. The Munich draft provided in effect that the criminal jurisdiction of a State in whose airspace an offence was committed was not to be exercised unless that State was the State of registration of the aircraft or unless the aircraft landed in that State, except in five specified cases. The drafting of that provision was influenced by Article 19, paragraph 1, of the Convention on Territorial Sea and the Contiguous Zone (Geneva, 29 April 1958) which provided: "The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases". The Montreal Subcommittee (March 1962) proposed that the provision in the draft convention should be revised so that the State overflown "may not compel the aircraft to land in order to exercise its criminal jurisdiction", except in the five cases specified in the Munich draft. At the present session the Committee, after discussion, decided that the rule should be as follows: "A Contracting State which is not the State of registration may not delay or interfere with the aircraft in order to exercise its criminal jurisdiction except" in the five cases (see paragraph 3 of Article 2 of the draft convention prepared during the session). The new rules, as adopted, applies not only to the State overflown (as in the Munich draft), but also to any State which is not the State of registration of the aircraft.

9. Article 2, paragraph 4, of the draft convention states: "This article does not supersede any basis for criminal jurisdiction which a State might have incorporated into its national laws". Therefore, it is possible that more than one State might have, and claim, jurisdiction over a given offence committed on board aircraft. With a view to avoiding or solving consequent problems of conflict of criminal jurisdiction, a proposal was made to the effect that the Convention should establish an order of priority as between the jurisdictions of different States. The Committee after discussion rejected the proposal. In this connection, it was noted that another proposal to introduce a system of priority had also been rejected by the Committee at its Twelfth Session.

"NE BIS IN IDEM"

10. The provision of the Munich draft convention to the effect that if a person has been acquitted or, in case of a conviction, has undergone lawful punishment, in a Contracting State, in respect of an offence, he shall not be prosecuted in another Contracting State unless he is a national of the latter State has been retained in the present draft convention with a few changes; also a provision has been added with respect to the case where the punishment has been undergone in whole or in part (see Article 3, paragraph 3).

POWERS OF THE AIRCRAFT COMMANDER AND OTHERS⁽¹⁾

11. The present draft convention retains in substance the provisions of the Munich draft concerning the powers which may be exercised by the aircraft commander⁽¹⁾ with respect to the commission of an act on board which is likely to endanger the safety of the aircraft or persons or property on board or which might be prejudicial to good order and discipline on board. In general these powers include those of taking reasonable measures, including restraint, which are necessary to protect the safety of the aircraft or persons or property thereon or to maintain good order and discipline on board (Article 5). They include also the power to disembark in the territory of any State in which the aircraft lands, any person who is believed by the aircraft commander on reasonable grounds to have committed or to be about to commit a dangerous act of the kind under consideration (Article 6, paragraph 1). The aircraft commander is also empowered to deliver to the authorities of a Contracting State where the aircraft lands the person whom he has placed under restraint if he has reasonable grounds to believe that such person has committed a serious offence according to the law of the State of registration of the aircraft (Article 6, paragraph 2).

12. It will be noted that the powers of the aircraft commander may be exercised only when his belief as to the commission, actual or anticipated, of the act concerned is based on reasonable grounds; also the measures imposed must be reasonable, and they must be necessary for protecting the safety of the aircraft or persons or property on board or for maintaining good order and discipline on board. Furthermore, measures of restraint imposed upon a person cannot be continued beyond the point where the aircraft lands except in the special cases specified in Article 6, paragraph 3, of the draft convention.

⁽¹⁾ Other crew members and passengers also may exercise the same powers in specified circumstances: see Article 5, paragraph 2.

13. The Convention specifies the duties of the aircraft commander towards the authorities of the State in whose territory he disembarks any person or delivers a suspected offender pursuant to his powers under paragraphs 1 and 2 of Article 6. In the former case he has to notify the authorities of that State of the fact of such disembarkation and the reasons for the action (Article 7, paragraph 1). In the latter case he must transmit to the authorities to whom he delivers the suspected offender, such evidence and information as, in accordance with the law of the State of registration of the aircraft, are lawfully in his possession (Article 7, paragraph 2). If the aircraft commander has placed a person on board under restraint, he must, as soon as practicable, and if possible before landing, inform the authorities of the State of landing of the fact of such restraint and the reasons therefor (Article 8).

14. The aircraft commander will not be liable, nor will any other member of the crew or any passenger, on account of any measures imposed, or other actions taken, in accordance with the provisions of the Convention, and the owner, the operator and the person on whose behalf the flight was performed will, also be similarly protected, unless he is the person who committed the offence or other act involved (Article 9).

15. The Convention provides that any Contracting State shall allow the aircraft commander to disembark a person pursuant to Article 6, paragraph 1. Such a State, provided its laws so permit, will also have to take custody, in accordance with its laws, of any person whom the aircraft commander delivers pursuant to Article 6, paragraph 2, if it is satisfied that the circumstances warrant such taking into custody. The State taking custody has to notify certain other States (Article 10, paragraph 2).

16. The draft has been revised so as to provide that the State taking custody must immediately make a preliminary investigation as to whether an offence has been committed and report its findings to the same States as those specified in Article 10, paragraph 2. Further the Convention provides that within a time limit specified by national law the person in custody must be set at liberty unless within that time he is either charged with an offence under the law of that State or unless some other State has demanded his extradition, (Article 10, paragraphs 3 and 4).

17. With respect to a person disembarked pursuant to Article 6, he must, unless penal or extradition measures have been imposed upon him, be at liberty as soon as practicable to proceed to any destination of his choice. Without prejudice to this right, the State of disembarkation may exercise its right to deport the person concerned to the State of which he is a national or permanent resident or, if there is no such State, to the territory of the State in which he began his journey by air. (Article 10, paragraphs 5 and 6).

18. Neither disembarkation, nor delivery, of the person concerned is to be considered as admission to the territory for the purposes of the laws of the Contracting States relating to entry or admission of aliens (Article 10, paragraph 7).

19. The Committee considered the question of who should pay the cost of deporting a person from the State in whose territory he has been disembarked, but was unable to agree that this matter should be dealt with in this Convention.

SAFETY OF AIR NAVIGATION

20. The draft convention retains the provision of the Munich text to the effect that in exercising jurisdiction in connection with any offence committed on board an aircraft the Contracting States shall pay due regard to the safety and other interests of air navigation and avoid unnecessary delay of the aircraft or persons or property thereon.

EXTRADITION

21. The Munich draft convention contained no provision concerning extradition. The Montreal Subcommittee proposed the inclusion of an article as follows: "Nothing in this Convention shall be deemed to create a right to request extradition of any person or an obligation to grant extradition." The Committee during the present session considered that, in order to make the Convention more effective from the practical point of view, the draft convention should contain provisions concerning extradition: otherwise it might prove impossible to bring to justice a person who has committed an offence on board aircraft. Certain extradition treaties provide for extradition only in respect of offences committed in the territory of the State requesting extradition. After consideration, the Committee decided to include in the draft convention the following provision: "Offences committed on aircraft registered in a Contracting State shall be treated, for the purpose of extradition treaties, as if they had been committed also in the territory of the State of registration of the aircraft" (Article 12, paragraph 1). The Committee considered, but did not accept, a proposal to limit this provision to offences committed over the high seas. The provision proposed by the Montreal Subcommittee, as above mentioned, is also included⁽¹⁾ in the draft convention but is made subject to the specific provision quoted. (Article 12, paragraph 2).

(1)

Except that the Committee decided not to include the words "a right to request extradition of any person or," because it considered that any State may request another State to extradite a person.

HIJACKING

22. The Committee considered a proposal that the draft convention should include provisions dealing with seizure by violence, commonly called "hijacking", of aircraft. The objectives of such a provision would be to secure the collaboration of States in order that the control of the aircraft may be restored to its lawful commander; that the passengers and crew may be able to continue their journey as soon as possible and that the aircraft and the property thereon may be returned to the persons lawfully entitled to their possession. It was agreed that a provision should be included concerning hijacking of aircraft to the effect that whenever, through the use or threat of violence against the aircraft, the aircraft commander lost, or was in danger of losing control over the aircraft, all Contracting States should agree to take appropriate measures to restore control of the aircraft to its lawful commander. Therefore the draft convention contains an article on the subject of hijacking: see Article 4.

CHARTER

23. The Committee considered a proposal to include in the draft convention a provision concerning chartered aircraft, as follows: "An aircraft chartered on a barehull basis to an operator who is a national of a State other than the State of registration shall be treated for the purpose of this Convention as if throughout the period of the charter it was registered in that other State". The Committee decided not to include such a provision because, in its opinion, the problem in question requires to be more fully studied than was practicable at this session. The Committee decided that any solution which might be necessary should be sought in connection with the proposed study of the subject matter of Resolution "B" of the Guadalajara Conference.

RULES OF PROCEDURE

The **Provisional Rules of Procedure** presented by the Secretariat in Doc No. 3 are **not reproduced**. However, the Rules as adopted at the **First Meeting** and amended **at the Thirteenth Meeting** are reproduced below. The two amendments made at the **Thirteenth meeting** are shown with underlining.

Rule 1 (Composition of the Conference)

- (1) The Conference shall be composed of the Representatives of the States invited by the Council of ICAO to attend the Conference.
- (2) Representatives may be accompanied by alternates and advisers.
- (3) International organizations invited by the Council of ICAO to attend the Conference may be represented by observers.

Rule 2 (Credentials and Credentials Committee)

- (1) The credentials of Representatives of the States, their alternates and advisers and of observers shall be deposited with the Secretary General⁽¹⁾. No person shall be the Representative of more than one State.
- (2) A credentials Committee shall be established at the beginning of the Conference. It shall consist of five members representing five States nominated by the President of the Conference.
- (3) The Credentials Committee shall elect its own Chairman and shall examine the credentials of Delegates and report to the Conference without delay.

Rule 3 (Eligibility for participation in meetings)

Any members of a Delegation shall be entitled, pending the presentation of a report by the Credentials Committee and Conference action thereon, to attend meetings and to participate in them, subject, however, to the limits set forth in these Rules. The Conference may bar from any further part in its activities any member of a Delegation whose credentials it finds to be insufficient.

Rule 4 (Officers)

- (1) The Conference, as soon as practicable after its commencement, shall elect its President. Until such election, the President of the ICAO Council or, in his absence, his nominee, shall act as President of the Conference.
- (2) The Conference shall elect four Vice-Presidents and the Chairman of the Commissions referred to in Rule 5.
- (3) The Conference shall have a Secretary General who shall be the Secretary General of the International Civil Aviation Organization or his nominee.⁽¹⁾

⁽¹⁾ Amendments made at the Thirteenth Meeting.

Rule 5 (Commissions, Committees and Working Groups)

- (1) The Conference shall establish such Commissions open to all delegations or Committees of limited membership as it may consider to be necessary or desirable.
- (2) A Commission or a Committee shall establish such Working Groups as it may consider to be necessary or desirable. Each Committee or Working Group shall elect its own Chairman.

Rule 6 (Public and private meetings)

Meetings of the Conference shall be held in public unless the Conference decides that any of its meetings shall be held in private. Meetings of the Commissions, Committees and Working Groups shall not be open to the public except by decision of the Commissions, Committees or Working Groups concerned.

Rule 7 (Participation of observers)

- (1) Observers may participate without vote in the deliberations of the Conference, when its meetings are not held in private. With respect to private meetings, individual observers may be invited by the Conference to attend and to be heard.
- (2) Observers may attend and be heard by the Commissions, Committees and Working Groups if invited by the body concerned.

Rule 8 (Quorum)

- (1) A majority of the States represented at the Conference and whose Representatives have not notified the Secretary General of their departure shall constitute a quorum.
- (2) The Conference shall determine the quorum for the Commissions and Committees if, in any case, it is considered necessary that a quorum be established for such bodies.

Rule 9 (Powers of the presiding Officer)

The presiding Officer of the Conference, a Commission, a Committee or a Working Group shall declare the opening and closing of each meeting, direct the discussion, ensure observance of these rules, accord the right to speak, put questions and announce decisions. He shall rule on points of order and subject to these Rules, shall have complete control of the proceedings of the body concerned and over the maintenance of its meetings.

Rule 10 (Speakers)

- (1) The presiding Officer shall call upon speakers in the order in which they have expressed their desire to speak; he may call a speaker to order if his observations are not relevant to the subject under discussion.
- (2) Generally, no delegation should be called to speak a second time on any question except for clarification, until all other delegations desiring to speak have had an opportunity to do so.
- (3) At meetings of the Conference, the Chairman of a Commission or a Committee may be accorded precedence for the purpose of explaining the conclusions arrived at by the body concerned. In Commission or Committee meetings, a similar precedence may be given to the Chairman of a Working Group.

Rule 11 (Points of Order)

During the discussion on any matter, and notwithstanding the provisions of Rules 10, a Representative of a State may at any time raise a point of order, and the point of order shall be immediately decided by the presiding officer. Any Representative of a State may appeal against the ruling of the presiding officer and any discussion on the point of order shall be governed by the procedure stated in Rule 14. The ruling of the presiding officer shall stand unless over-ruled by a majority of votes cast. A Representative of a State speaking on a point of order may speak only on this point, and may not speak on the substance of the matter under discussion before the point was raised.

Rule 12 (Time limit of Speeches)

A presiding Officer may limit the time allowed to each speaker, unless the body concerned decides otherwise.

Rule 13 (Motions and Amendments)

- (1) A motion on amendment shall not be discussed until it has been seconded. Motions and amendments may be presented and seconded only by Representatives of States. However, observers may make a motion or amendment provided that such motion or amendment must be seconded by the Representatives of two States.
- (2) A motion shall not be withdrawn when an amendment to the motion is under discussion or has been adopted.

Rule 14 (Procedural Motions)

Subject to the provisions of Rule 13(1) any Representative of a State may move at any time the suspension or adjournment of the meeting, the adjournment of the debate on any question, the deferment of discussion of an item, or the closure of the debate on an item. After such a motion

has been made and explained by its proposer, only one speaker shall normally be allowed to speak in opposition to it, and no further speeches shall be made in its support before a vote is taken. Additional speeches on such motion may be allowed at the discretion of the presiding officer, who shall decide the priority of recognition.

Rule 15 (Order of Procedural Motions)

The following motions shall have priority over all other motions, and shall be taken in the following orders:

- (a) to suspend the meeting;
- (b) to adjourn the meeting;
- (c) to adjourn the debate on an item;
- (d) to defer the debate on an item;
- (e) for closure of the debate on an item.

Rule 16 (Reconsideration of Proposals)

Permission to speak on a motion to reopen a debate already completed by a vote on a given question shall normally be accorded only to the proposer and to one speaker in opposition, after which it shall be immediately put to vote. Additional speeches on such a motion may be allowed at the discretion of the presiding officer, who shall decide the priority of recognition. Speeches on a motion to reopen shall be limited in content to matters bearing directly on the justification for reopening.

Rule 17 (Discussions in Working Groups)

Working Groups shall conduct their deliberations informally and Rules 11, 12, 13, 14, 15 and 16 shall not apply to them.

Rule 18 (Voting Rights)

- (1) Each State duly represented at the Conference shall have one vote at meetings of the Conference.
- (2) Each State represented in a Commission, Committee or Working Group shall have one vote at meetings of such bodies.
- (3) Observers shall not be entitled to vote.

Rule 19 (Voting of presiding Officer)

Subject to the provisions of Rule 18, the presiding Officer of the Conference, Commission, Committee or Working Group shall have the right to vote on behalf of his State.

Rule 20 (Majority required)

Except as otherwise provided in these Rules, decisions shall be by a majority of the votes cast. An abstention shall not be considered as a vote.

Rule 21 (Method of Voting)

Voting shall normally be by voice, by show of hands, or by standing. In meetings of the Conference there shall be a roll call if requested by the Representatives of two States. The vote or abstention of each State participating in a roll call shall be recorded in the minutes.

Rule 22 (Division of Motions)

On request of any Representative of a State and unless the Conference decides otherwise, parts of a motion shall be voted on separately. The resulting motion shall then be put to a final vote in its entirety.

Rule 23 (Voting on Amendments)

Any amendment to a motion shall be voted on before vote is taken on the motion. When two or more amendments are moved to a motion, the vote should be taken on them in their order of remoteness from the original motion, commencing with the most remote. The presiding officer shall determine whether a proposed amendment is so related to the motion as to constitute a proper amendment thereto, or whether it must be considered as an alternative or substitute motion.

Rule 24 (Voting on Alternative or Substitute Motions)

Alternative or substitute motions, shall, unless the meeting otherwise decides, be put to vote in the order in which they are presented, and after the disposal of the original motion to which they are alternative or in substitution. The presiding Officer shall decide whether it is necessary to put such alternative or substitute motions to vote in the light of the vote on the original motions and any amendments thereto. This ruling may be reversed by a majority of votes cast.

Rule 25 (Tie vote)

In the event of a tie vote, a second vote on the motion concerned shall be taken at the next meeting, unless the Conference, Commission, Committee or Working Group decides that such second vote be taken during the meeting at which the tie vote took place. Unless there is a majority in favour of the motion on this second vote, it shall be considered lost.

Rule 26 (Languages)

- (1) Documents of the Conference shall be prepared and circulated in the English, French and Spanish languages.
- (2) The English, French and Spanish languages shall be used in the deliberations of the Conference, Commissions, Committees and Working Groups. Speeches made in any of the three languages shall be interpreted into the other two languages, except where such interpretation is dispensed with by unanimous consent.
- (3) Any representative may make a speech in a language other than the official languages. In this case he shall himself provide for interpretation into one of the working languages. Interpretation into the other working languages by the interpreters of the Secretariat may be based on the interpretation given in the first working language.

Rule 27 (Records of Proceedings)

- (1) Minutes of the meetings of the Conference shall be prepared by the Secretariat and approved by the Conference.
- (2) Proceedings of Commissions, Committees and Working Groups shall be recorded in such form as the body concerned may decide.

Rule 28 (Amendment of the Rules of Procedure)

These Rules may be amended, or any portion of the rules may be suspended, at any time by a majority vote of the Conference.

Rule 29 (Representative of a State - Definition)

In these Rules, except Rule 1, the expression "Representative of a State" shall be deemed to include any member of the delegation of a State.

FINAL CLAUSES OF THE DRAFT CONVENTION ON OFFENCES
AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT

(Presented by the Secretariat)

The draft Convention prepared by the Legal Committee does not contain final clauses. The Secretariat has prepared the draft final clauses set forth below. They are only samples which might be of assistance in drafting final clauses. They are based on the relevant articles of the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier, signed at Guadalajara on 18 September 1961⁽¹⁾, this being the most recent air law convention drawn up at a Conference held under the auspices of ICAO.

Article A

Until the date on which this Convention comes into force in accordance with the provisions of Article C, it shall remain open for signature on behalf of any State which at that date is a Member of the United Nations or of any of the Specialized Agencies.

Article B

1. This Convention shall be subject to ratification by the signatory States.
2. The instruments of ratification shall be deposited with the International Civil Aviation Organization.

Article C

1. As soon as of the signatory States have deposited their instruments of ratification of this Convention, it shall come into force between them on the ninetieth day after the date of the deposit of the instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.
2. As soon as this Convention comes into force, it shall be registered with the United Nations by the International Civil Aviation Organization.

Article D

1. This Convention shall, after it has come into force, be open for accession by any State Member of the United Nations or of any of the Specialized Agencies.
2. The accession of a State shall be effected by the deposit of an instrument of accession with the International Civil Aviation Organization and shall take effect as from the ninetieth day after the date of such deposit.

⁽¹⁾ except that the depositary named in that Convention was the Government of the United States of Mexico.

Article E

1. Any Contracting State may denounce this Convention by notification addressed to the International Civil Aviation Organization.
2. Denunciation shall take effect months after the date of receipt by the International Civil Aviation Organization of the notification of denunciation.

Article F

1. Any Contracting State may at the time of its ratification of or accession to this Convention or at any time thereafter declare by notification to the International Civil Aviation Organization that the Convention shall extend to any of the territories for whose international relations it is responsible.
2. The Convention shall, ninety days after the date of the receipt of such notification by the International Civil Aviation Organization, extend to the territories named therein.
3. Any Contracting State may denounce this Convention, in accordance with the provisions of Article E, separately for any or all of the territories for the international relations of which such State is responsible.

Article G

No reservation may be made to this Convention.

Article H

The International Civil Aviation Organization shall give notice to all States Members of the United Nations or of any of the Specialized Agencies:

- a) of any signature of this Convention and the date thereof;
- b) of the deposit of any instrument of ratification or accession and the date thereof;
- c) of the date on which this Convention comes into force in accordance with Article C, paragraph 1;
- d) of the receipt of any notification of denunciation and the date thereof;
- e) of the receipt of any declaration or notification made under Article F and the date thereof.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

DONE at on the day of One Thousand Nine Hundred and Sixty-three in three authentic texts drawn up in the English, French and Spanish languages.

This Convention shall be deposited with the International Civil Aviation Organization with which, in accordance with Article A, it shall remain open for signature and the said Organization shall send certified copies thereof to all States Members of the United Nations or of any Specialized Agency.

HISTORY OF THE WORK IN ICAO
ON THE LEGAL STATUS OF THE AIRCRAFT*

(Presented by the Secretariat)

Rapporteur's Report

1. The Legal Committee, at its Sixth Session (June 1950),⁽¹⁾ placed the problem of the Legal Status of the Aircraft on the Work Programme of the Committee, appointing Dr. E.M. Loaeza (Mexico) as rapporteur⁽²⁾ on the subject.

2. Dr. Loaeza subsequently presented two reports⁽³⁾.

2.1 The first report led to the following conclusions:

(a) There is need for a clear definition of what is meant by "legal status of an aircraft";

(b) There should be a definition and delimitation, by international unification of rules, of the several relations of aircraft to:

- (i) the State of registry,
- (ii) other States,
- (iii) parties having rights in the aircraft,
- (iv) parties on board,
- (v) other parties. (4)

2.2 The second report led to the following conclusions:

"For the present, I consider that it would be useful that it be recognized that the aircraft has a legal nature sui generis. This nature sui generis has been recognized, as I have pointed out above, by a certain number of authors and even by some legislations. I consider that difficulties encountered by the Legal Committee during numerous discussions often arise from the absence of a common idea on this fundamental notion of the legal nature of the aircraft."

(1) Doc 7035 - LC/128 Legal Committee Sixth Session (Montreal, May 30th - June 17th, 1950) Minutes and Documents, 31

(2) Ibid., 33.

(3) These reports are found respectively in Doc 7157-LC/130 Legal Committee Seventh Session (Mexico City, January 2nd - January 23rd, 1951) Minutes and Documents, 313 - 320 and Doc 7229-LC/133, Legal Committee Eighth Session (Madrid, 11 September - 28 September 1951) Minutes and Documents, 261 - 265.

(4) Doc 7157-LC/130 op. cit., 319.

*See Table of Contents on page 108.

"This could appear to be a purely theoretical question. However, it is the very basis of all the problems which the Legal Committee has to consider and, before looking for and studying the consequences of this legal nature, it will be fitting for the Committee to take a decision and give its opinion on the legal nature."(1)

3. On 15 May 1953, the Council decided to include the subject of the legal status of the aircraft in Part A of the Legal Committee's work programme.(2)

4. For the Ninth Session (August-September 1953) of the Legal Committee the Secretariat prepared a report(3) on the Legal Status of the Aircraft which analyzed a discussion that had taken place during the Lucerne Conference of the International Law Association (August-September 1952). At that Session the Legal Committee appointed a Subcommittee on the subject.(4)

Subcommittee - Montreal, 1954

5. During the Tenth Session (September 1954) of the Legal Committee, this Subcommittee held several meetings to determine the best procedure to be followed in the further consideration of the legal problems involved in studying the legal status of the aircraft.(5) It was finally determined that the most useful approach would be to consider first those circumstances of most frequent occurrence on aircraft which would raise problems concerning the legal status of aircraft and give preliminary consideration to the problem of what law does, or should, govern those acts under various conditions. This was preferred to an approach which first studied the status of aircraft in law and then applied that conclusion to the several acts and circumstances occurring on aircraft to determine the applicable law governing the particular act under the circumstances in which it occurred.

6. The several types of acts which the Subcommittee considered appropriate for its study were:

- (1) Acts which are crimes under the law of the State of registry of the aircraft and the law of the State in which the act occurred.
- (2) Acts which are crimes according to the law of only one of the two States mentioned in (1) above.

(1) Doc 7229-LC/133, op. cit., 265.
 (2) Doc 7408-C/864 - 1953 Action of the Council Nineteenth Session, 18.
 (3) Doc 7450-LC/136 Legal Committee Ninth Session (Rio de Janeiro, 25 August - 12 September 1953) Volume II Documents, 239 - 251.
 (4) Doc 7450-LC/136 Legal Committee Ninth Session (Rio de Janeiro, 25 August-12 September 1953) Volume I - Minutes, (xviii).
 (5) For the full report of the Subcommittee, see Doc 7601-LC/138 Legal Committee - Tenth Session (Montreal 7-24 September 1954) Volume I, Minutes, (xlix)-(li).

- (3) Acts for which a licence is required by the law of either or both States described in (1), such as sale and service of alcoholic beverages, sale and service of food, carriage of firearms, carriage and use of various types of drugs and medicines, etc.
- (4) Acts which are tortious according to the law of either or both States described in (1) above.
- (5) Acts which constitute the formation of contracts according to the law of either or both of the two States described in (1) above.
- (6) Acts which constitute the execution, revocation, or modification of wills according to the law of either or both States described in (1) above.
- (7) Acts which affect the status of persons such as birth, death, marriage, etc.

It was also the opinion of the Subcommittee that in studying the several acts described above, consideration should be given to several sets of physical circumstances in which the aircraft may be at the time of the act in question to determine the effect of such physical circumstances upon the question of what is, or should be, the applicable law. These physical circumstances are:

- (a) The aircraft is in transit nonstop in the airspace above the geographical boundaries of a State other than the State of registry of the aircraft.
- (b) The aircraft is in the airspace above the geographical boundaries of a State other than the State of registry of the aircraft and a subsequent landing is to be effected in that State.
- (c) The aircraft is in the airspace above the geographical boundaries of a State other than the State of registry of the aircraft but has made a prior landing in such State.
- (d) The aircraft is in the airspace above the geographical boundaries of a State other than the State of registry of the aircraft but the aircraft has made a prior landing in such State and a subsequent landing in such State is intended.
- (e) The aircraft is over the high seas.
- (f) The aircraft is on the ground at an airport in a State other than the State of registry of the aircraft.

Subcommittee - Geneva, 1956

7. At its first plenary session held in Geneva from 3 to 13 September 1956 the Subcommittee decided to limit its study to the criminal aspects of problems relating to the legal status of the aircraft, namely: (1) acts which are crimes under the law of the State of registration of the aircraft and the law of the State in which the act occurred; (2) acts which are crimes according to the law of only one of the States mentioned in (1) above; (3) acts for which a licence is required by the law of either or both States described in (1), such as sale and service of alcoholic beverages, sale and service of food, carriage of firearms, carriage and use of various types of drugs and medicine, etc.

8. It was understood that the problem of "acts for which a licence is required by the law" would be studied only as far as penal matters were concerned.

8.1 It was further understood that the study of criminal aspects of the legal status of aircraft was undertaken without prejudice to possible future study of problems of a civil-law nature, such as contracts and torts related to the legal status of the aircraft.

9. In view of the action taken by the Tenth Session of the Assembly (Caracas, June-July 1956)⁽¹⁾ with regard to study by the Legal Committee of the subject of the legal status of the aircraft commander, the Subcommittee considered that it would be appropriate and even necessary for it to examine those aspects of the legal status of the aircraft commander which pertained to crimes committed on board aircraft.

10. In regard to the criminal aspects of problems relating to the legal status of the aircraft, the Subcommittee considered that its study should include all offences punishable by penal law and that no distinction should be made between minor and serious offences. However, the Subcommittee did not feel able to proceed beyond an examination and analysis of the problems and difficulties relating to penal offences committed on board aircraft in flight and it considered that further study was necessary before definite recommendations could be presented.

11. At Geneva, the Subcommittee was able to make only a preliminary survey of the subject. The report of the Subcommittee is found in Appendix I hereto.⁽²⁾

(1) Doc 7712 = A10-IE/5 - 10th Session of the Assembly Caracas, June-July 1956 Report and Minutes of the Legal Commission, 5.

(2) See also Doc 7921-IC/143-2 - Legal Committee Eleventh Session (Tokyo, 12-25 September 1957) - Volume II - Documents, 157-176.

Subcommittee - Montreal, 1958

12. The second full session of the Subcommittee was held at Montreal from 9 to 20 September 1958. As a result of its study at that session, the Subcommittee developed a draft convention⁽¹⁾ and a report⁽²⁾ thereon; and requested the Secretary to prepare a commentary on that draft convention in consultation with the Chairman.⁽³⁾

Legal Committee, Twelfth Session - Munich, 1959

13. Meeting in its Twelfth Session at Munich from 18 August to 4 September 1959, the Legal Committee adopted a Draft Convention on Offences and Other Acts Occurring on Board Aircraft⁽⁴⁾ and a report⁽⁵⁾ thereon. The Council later circulated these documents to States and international organizations for comment.

Subcommittee - Montreal, 1962

14. On 27 November 1961⁽⁶⁾ the Council decided that the Chairman of the Legal Committee should be requested to appoint a subcommittee of the Legal Committee to consider the comments received from States and international organizations on the Munich draft convention. This subcommittee met at Montreal from 26 March to 5 April 1962 and prepared a report⁽⁷⁾ which contained a commentary on the Munich draft article by article as well as a number of texts which the subcommittee proposed in substitution for certain of the Munich provisions.

Legal Committee, Fourteenth Session - Rome, 1962

15. The report just mentioned was considered by the Legal Committee during its Fourteenth Session held at Rome from 28 August to 15 September 1962 at which time the Committee drew up the draft Convention on Offences and Certain Other Acts Committed on Board Aircraft⁽⁸⁾ which draft, together with a report of the Committee thereon,⁽⁹⁾ will be placed before the International Conference on Air Law convened for 20 August 1963.

(1) See Appendix II hereto. See also Doc 8111-LC/146-2 - Legal Committee Twelfth Session (Munich, 18 August - 4 September 1959), 16-19

(2) See Appendix III hereto. See also Doc 8111-LC/146-2, op. cit., 20-23.

(3) See Appendix IV hereto. See also Doc 8111-LC/146-2, op. cit., 24-41.

(4) See Appendix V hereto. See also Doc 8111-LC/146-2, op. cit., 1-4.

(5) See Appendix VI hereto. See also Doc 8111-LC/146-2, op. cit., 5-12.

(6) Doc 8217-C/935 - Action of the Council, Forty-fourth Session, 12.

(7) See Appendix VII hereto. See also Doc 8302-LC/150-2, Legal Committee Fourteenth Session (Rome, 28 August - 15 September 1962), 8.

(8) Conference Document No. 1.

(9) Conference Document No. 2.

APPENDIX I*

REPORT OF THE SUBCOMMITTEE ON THE
LEGAL STATUS OF THE AIRCRAFT

(Geneva, September 1956)

1. The Sub-committee on the Legal Status of the Aircraft, which was appointed by the Committee in September 1953, held 16 meetings between 3 and 13 September 1956.

2. The following attended:

Mr. J.P. Houle (Canada)
Mr. A. Garnault (France)
Mr. R. Monaco (Italy)
Mr. I. Narahashi (Japan)
Mr. E.M. Loaeza (Mexico)
Mr. J.H. Beekhuis (Netherlands)
Mr. C. Gómez Jara (Spain)
Mr. K. Sidenbladh (Sweden)
Mr. R.O. Wilberforce (United Kingdom)
Mr. R.P. Boyle (United States)

Mr. K.M. Beaumont - ex officio (Chairman of
the Legal Committee)

Mr. J.C. Cooper of IATA, Observer

Mr. H.W. Foulton (Australia) and Mr. E. Hamilton (Chile) were unable to attend.

3. Mr. J.H. Beekhuis was elected Chairman, since Mr. G.W. Galkins (USA) who was Chairman has ceased to be a member of the Sub-Committee.

Scope of Study

4. The Sub-committee considered LC/SC "Legal Status" WD No.14⁽¹⁾ containing the programme of study as determined at the previous meeting held in Montreal in 1954. The Sub-committee was informed by the Secretariat that the Legal Commission of the Assembly held in Caracas in June-July 1956 had considered that in the study of the subject Legal Status of the Aircraft, priority ought to be accorded to the question of crimes committed on board aircraft and acts for which a licence is required by law. The Sub-committee,

(1) This publication is out of print and is not available for distribution.

* It is noted that this report has attached to it Appendices A, B, C, D and E.

therefore, decided to limit its study during the present session to the criminal aspects of problems relating to the legal status of the aircraft, namely points 1, 2 and 3 of the work programme, it being understood that the problem of "acts for which a licence is required by law" would be studied only as far as penal matters were concerned, and it being further understood that such study of criminal aspects is undertaken without prejudice to possible future study of problems of a civil law nature, such as contracts and torts related to the legal status of aircraft. In view of the action taken by the Assembly recently with regard to study by the Legal Committee of the subject of legal status of the aircraft commander, the Sub-committee considered that it would be appropriate and even necessary for this Sub-committee to examine those aspects of the subject (Legal Status of the Aircraft Commander) which pertained to crimes committed on board aircraft.

5. The Sub-committee considered that at this time its study should include all offences punishable by penal law and that no distinction should be made between minor and serious offences.

6. In view of the complication of the subject, of the fact that certain of the documentation had not been available to the Sub-committee before the meeting, and of the necessity of obtaining further information on certain important aspects, the Sub-committee did not feel able to proceed beyond an examination and analysis of the problems and difficulties involved, and considers that further study is necessary before definite recommendations can be presented. The Sub-committee emphasises that this report is only a preliminary survey of the subject.

7. With a view to further progress, the Sub-committee recommends -

- (1) That information should be sought from competent bodies (including IATA) regarding technical aspects relating to the duties of the aircraft commander and other operating personnel;
- (2) That upon receipt of this information and any other relevant documentation, consideration should be given to the convening of a further meeting of the Sub-committee;
- (3) That this report, in spite of its preliminary character be nevertheless circulated in the usual manner.

Need for a Convention

8. At the outset, consideration was given to the question whether there was need for a convention concerning offences committed on aircraft.

(a) One characteristic of aviation is that aircraft fly over the high seas or over areas having no territorial sovereign. While national laws of some States confer jurisdiction on their courts to try offences committed on aircraft during such flights, this was not the case in others, and there was no internationally agreed system which would coordinate the exercise of national jurisdictions in such cases. Further, with high-speed of modern aircraft and having regard to the great altitudes at which they fly as well as other factors, such as meteorological conditions and, in certain parts of the world, the fact that several States may be overflown by aircraft within a small space of time, there could be occasions when it would be impossible to establish the territory in which the aircraft was at the time a crime was committed on board. There was, therefore, the possibility

that in such a case, and in the absence of an internationally recognized system with regard to exercise of national jurisdictions, the offender may go unpunished.

(b) National jurisdictions in respect of criminal acts are based on criteria which are not uniform: for example, on nationality of the offender, on nationality of the victim, on the locality where the offence was committed, or on nationality of the aircraft on which the crime occurred. Thus, several States may claim jurisdiction over the same offence committed on board aircraft, in certain cases. Such conflict of jurisdictions could be avoided only by international agreement.

(c) The possibility that the same offence may be triable in different States might result in the offender being punished more than once for the same offence. This undesirable possibility could be avoided by a suitable provision in the convention.

(d) The conclusion generally reached by the Sub-committee was that in order to solve the problems mentioned above, it was desirable to have a convention, although certain members felt that the entire subject ought to be studied further before they would be committed to that view. It was in any case agreed that the aim of such a convention should not be to establish or create jurisdiction; on the contrary, the object of the convention would be the recognition, by international agreement, of the competence of States to establish jurisdiction of their courts under national laws in cases of the kind mentioned above.

Scope of proposed Convention

9. The Sub-committee considers that a convention regarding offences on board aircraft should apply to any act or omission by a person on board an aircraft which is punishable under penal law. Further, the application of the convention should be limited to aircraft in flight (the expression "in flight" to be defined later) or on the surface of the high seas, or on the land in areas which are not within the territory of any State. For the convention to be applicable, the person committing the offence should have been in the aircraft at the time the act or omission complained of occurred. It was considered that State aircraft should not be affected by the convention.

Scheme of the Convention

10. The Sub-committee considers that if it is decided to have a convention on the legal status of the aircraft, it would be appropriate to include provisions in the convention with regard to the jurisdiction of States parties to the convention over offences committed on board aircraft, within the scope of the convention as described above. The sub-committee also discussed whether it would be desirable to establish priorities in respect of such jurisdictions and certain proposals for the establishment of different priorities were made. Some members of the Sub-committee, however, are of the opinion that it is not necessary to establish a system of priority of jurisdictions. It was agreed that the convention should provide for international recognition that the commander of an aircraft may lawfully exercise certain powers and should contain provisions concerning the duties and powers of the authorities of the State where the aircraft, with the offender on board, lands after the offence was committed. The Sub-committee

considered the question of what substantive law will be applied by the court trying the case and also the principle that an offender shall not be tried more than once in respect of the same act or omission. These various topics are dealt with in the paragraphs which follow.

Jurisdictions

11. The Sub-committee noted that national laws of different States provide that their courts may try offences committed abroad if one or more of several factors are present, and noted certain extracts from national legislations appearing in the documentation. In the opinion of the Sub-committee, with, however, reservation on the part of some members, the convention should take account of the following elements with regard to jurisdiction:

- (1) the State within the territory of which the offence was committed;

(Note:- "Territory" includes the airspace above the land and territorial waters of a State.)

- (2) the State of nationality of the aircraft;
- (3) the State of first landing after the offence was committed (with the accused on board);
- (4) the nationality of the offender;
- (5) the State against the security, sovereign or public credit of which the offence was committed.

(Note:- As regards "public credit" the Sub-committee had principally in mind such offences as the falsification of public seals or currency.)

12. It was decided, with reservation on the part of some members, that the convention should not take account of the following elements in respect of jurisdiction:

- (a) the last place of departure of the aircraft before the offence was committed;
- (b) the nationality of the victim.

Priority of Jurisdictions

13. Some members of the Sub-committee are of the opinion that the problem of conflict of jurisdictions will not be satisfactorily solved unless the convention establishes an order of priority of jurisdictions. Others, however, do not consider that it is necessary to establish priorities in the proposed convention, and their arguments include the following:-

- (i) A system of priorities is required only if it is considered essential that the convention resolve conflicts between two or more States claiming jurisdiction. While resolution of possible conflict in the exercise of

penal jurisdiction may be theoretically desirable, nevertheless such conflicts have existed between nations for years with respect to all types of crimes and there appears to be no special reason to undertake resolution of this conflict in the limited class of crimes occurring on board aircraft.

- (ii) The conflicts of penal jurisdiction that may arise under the proposed convention are no different from the conflicts that arise in such jurisdiction in other cases. Since normal conflict in penal jurisdiction is usually worked out through the application of existing extradition treaties, there is no reason to suppose that the normal application of extradition treaties would not be a satisfactory answer to any conflicts that might arise under the convention.
- (iii) Introduction of a system of priorities into the convention has, at least, the indirect effect of requiring a determination as to which of the several bases of jurisdiction currently employed by the nations of the world in the exercise of penal jurisdiction is, as a matter of international air law, the most acceptable. For instance, to give priority to the State in which the aircraft first lands after commission of the offence, as is proposed by some members of the Sub-committee, has the effect of imposing on any State who may become party to the convention the obligation to recognize as valid the extraterritorial application of the laws of the State of first landing if that State elects to provide for such extraterritorial application of its domestic law in its own legislation. Some States may be reluctant in an international convention to recognize as valid the extraterritorial application of the laws of another State, particularly when it would permit application of the law of such State to an act occurring many miles beyond its territorial limits (possibly over territory of other States) merely because the aircraft, for any number of reasons, might first land in such State. Leaving the system of priorities out of the convention would avoid the very troublesome problem of expressing even indirectly a preference for some particular basis for the exercise of penal jurisdiction. This is highly desirable since it appears possible to develop a workable convention without priorities and thus avoid this difficult problem which involves not only legal but political and social considerations.

14. Against the above objections, the advocates of having a system of priority of jurisdiction advance the following arguments:-

- (a) while conflicts of jurisdiction are not peculiar to air law, the special features of aviation are likely to increase them for the reasons set out in paragraph 8, and it is therefore justified that they be solved by an international convention;
- (b) the omission of a system of priority would empty the convention of its essential practical purposes:
- 1) a convention without a system of priority would do nothing but increase the disorder of jurisdiction established in domestic law by adding some other internationally recognized jurisdiction, thereby multiplying the possibilities of conflict.

- 2) it is difficult to understand how, without a system of priority, the international recognition of the jurisdictions enumerated in the convention can operate in the case of multiple trials. How could the judge of State A try an offence already tried in State B, without denying the jurisdiction of that State as recognised by the Convention? What effects would State A attach to a judgment rendered in State B? How could the rule "non bis in idem" produce practical effects? The omission of a priority system not only removes all interest from the convention but it also adds to the juridical chaos of the present situation.

15. There were five main solutions submitted to the Sub-committee by certain members designed to establish a system for the avoidance of conflict of jurisdiction in respect of offences within the scope of the convention. Of these, each of four solutions sets out an order of priority in accordance with which a State party to the convention may exercise jurisdiction if its national law confers jurisdiction upon its courts. These proposals appear as Appendices A, B, C, D and E to this Report. None of these purports to be complete in setting out the procedure applicable to the system concerned: on the contrary, each proposal sets out only its main features. Further, these proposals were submitted by individual members for examination by the Sub-committee mainly with a view to finding out their respective strength and weaknesses and as a basis for discussion.

Comments on the proposals

16. The arguments advanced in respect of Proposals A, B, C and D are contained in the respective appendices, while Appendix E is self-explanatory. However a few additional points, as elicited during the discussions are mentioned below:

Proposal A

The intention of this proposal is to give priority to the State of nationality of the aircraft over all other States wishing to exercise jurisdiction, except the State mentioned in Principle III. Further, if a State is entitled under a treaty to ask for extradition of the offender, it will, nevertheless, by becoming a party to the convention, recognise the prior claim of another State to try the offender if the latter State has priority of jurisdiction under the convention.

Proposal B

The intention of the proposal is that if the State of first landing has a national law giving jurisdiction to its courts, then it is compulsory for other contracting States to recognize priority of jurisdiction in favour of that State.

Proposal C

The priority, for the purpose of exercising jurisdiction, accorded under this proposal to a contracting State where the offender is found, will be displaced in favour of exercise of jurisdiction by another contracting State if the latter State -

- (a) demands extradition of the offender in accordance with a treaty, and
- (b) is accorded a higher priority under this system.

This proposal, like all the others, does not require any State to extradite an offender (the question of extradition being governed solely by the terms of any extradition treaty to which the State might be a party).

With reference to sub-paragraph 2 of paragraph C of the proposal, an opinion was also expressed that the State whose nationality the aircraft possesses should have priority also in other cases, but only after the subjacent State. There was some difference of opinion as to the extent to which a convention should expressly mention the cases in which the State of nationality of the aircraft should have the right to exercise jurisdiction prior to the subjacent State, taking into account that the subjacent State in many cases was likely not to wish to prosecute the offender.

Features common to all systems

17. A feature common to all the systems is that a State has no obligation to exercise jurisdiction. The Convention would recognize a power to try the offence, but that power may or may not be exercised. What is compulsory is only to comply with the priority of jurisdiction, so that any contracting State will be bound to recognize the priority accorded to another contracting State to exercise jurisdiction. It was generally agreed that under any system of priority, first priority for the exercise of jurisdiction shall belong to the State against the security or "public credit" of which or against the person of whose sovereign the offence was committed ("public credit" having relation to falsification of public seals or currency). Secondly, it was also agreed that acts or omissions constituting only infringement by the passengers of the regulations on board or constituting only disobedience or breach of discipline by a member of the crew may have to be accorded special treatment and that the order of priorities may be affected, e.g. it may be that jurisdiction in respect of such acts should be recognized as pertaining only to the law of the State of nationality of the aircraft.

Aircraft Commander

18. It was generally recognized that consideration would have to be given for embodying in the convention some provisions pertaining to the exercise by the commander of an aircraft in flight of certain powers, for example of restraint or arrest in respect of any act prejudicial to security or constituting an offence or attempted offence against persons or property on board or the aircraft itself. This topic requires to be studied further, however, and no decisions could be taken at the present meeting.

Law to be Applied

19. While, obviously, the law of procedure for investigation and trial of an offence would be that of the forum, consideration was given to the question of the substantive law to be applied in respect of acts or omissions under the convention. The particular aspects of substantive law considered were those relating to definition of an offence, the effect of an act taking place elsewhere than the place where the act complained of occurred, where the offence was started or completed, joint acts and attempt to commit an offence. The possible solutions would be to

codify internationally the law on the subject, or to specify in the convention that the law of a given State shall govern, or to state nothing on the point in the convention. It was agreed that no State should be required by the convention to apply the substantive penal law of a foreign State. If no provision to the contrary appears in the convention, the substantive law of the State of the court trying the case will apply in all matters, such as those mentioned above, and the Sub-committee favoured this solution.

Powers and Duties of a State where the Aircraft Lands after the Offence

20. It was generally recognized that, as well in the case of the priority of jurisdiction being (except in cases of offences against the security or "public credit" or the sovereign of a State) given to the State of first landing as in other cases, it would be desirable to have provisions in the convention pertaining to the powers of the authorities of that State in regard to taking into custody the alleged offender upon his arrival on the aircraft when it first lands after the commission of a crime, preliminary investigations of an offence, including the examination of witnesses and taking possession of any articles pertaining to the offence. If the State of first landing does not try the offender, the question of forwarding to some other State having jurisdiction the record of the preliminary investigation could be included in a provision of the convention. Particularly in cases where the first priority was given to another State than the State of first landing, such as the subjacent State or the State of nationality of the aircraft, the Sub-committee will also have to consider whether such obligations should apply also to any other contracting State where the aircraft may land subsequently.

Multiple Trials

21. The Sub-committee considers that there should be a provision in the convention to the effect that no State shall prosecute or punish an alien if he has been prosecuted in another State in respect of the same acts or omissions and has been acquitted on the merits, or has been convicted and undergone the penalty imposed or, having been convicted, has been paroled or pardoned. One effect of this provision, apart from the obvious one, would be that though the convention will take account of jurisdictions of States variously founded, the provision in question will be a bar to the effective exercise of more than one jurisdiction, except in the single case where a State wishes to prosecute its own national.

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APPENDIX "A"

PROPOSAL A

Principle I

This Convention applies to any act or omission by a person on board an aircraft in flight which is punishable by penal law.

Principle II

Subject to the provisions of Principle III, if more than one State claims jurisdiction over the offender, jurisdiction may be exercised according to the following order of priority:

- (a) by the State of nationality of the aircraft;
- (b) by the State within the territory of which the offence was committed, if this is established;
- (c) by the State in which the aircraft first lands after commission of the offence.

Principle III

If the offence was against the security or credit of a State, or the person of its sovereign, that State shall have the right to exercise jurisdiction in priority to any other.

Principle IV

The order of priority of jurisdiction is not affected by any extradition treaty between the State having custody of the offender and the State seeking to exercise jurisdiction. No State shall be obliged, by reason of this convention, to extradite any person.

NOTE:- Definition of "aircraft in flight" to be decided later.

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NOTE OF EXPLANATION REGARDING PROPOSAL A

If it is decided to include in the proposed convention a system of priorities of jurisdiction, there are substantial practical advantages in giving the first choice of jurisdiction to the State of nationality of the aircraft.

(a) It is to the interest of the State of nationality of the aircraft and of the operating company (especially if nationalized) that good order is maintained on board, and offences dealt with efficiently and promptly, and that the aircraft and its passengers are not delayed.

(b) Passengers on board will normally comprise a substantial number of nationals of the State of the aircraft and, in many cases, the aircraft will be flying to an ultimate destination in that State.

(c) If jurisdiction is compulsorily exercised by the State overflown when the offence occurred, or by the State of first landing after the offence, the aircraft itself, and witnesses on board, are liable to be delayed for an indefinite time in a foreign State while evidence is being taken and local formalities complied with.

(d) The State of nationality of the aircraft, and the national company concerned will be able to give clear instructions to commanders of aircraft as to what steps should be taken in all cases in which offences occur - i.e. whether to carry the offender to destination, or to hand him over to local authorities or to waive jurisdiction and hand him over to the authorities of the place of first landing - if they are prepared to take custody of him and/or exercise jurisdiction.

(e) If the first priority is given to the State of nationality of the aircraft, it does not necessarily follow that this will always be exercised. On the contrary, it may happen that the commander, acting on instructions will not wish that such jurisdiction should be exercised - especially in the case of passengers who are not nationals of the State of nationality of the aircraft. On the other hand, if the first priority is given to the State of first landing after the offence or to the State overflown at the time of the offence, and one of these jurisdictions is exercised, it is almost inevitable that the aircraft and/or passengers on board are liable to be seriously delayed while evidence is taken and local legal requirements complied with.

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APPENDIX "B"

PROFOSAL B

1. If the offence was against the security of the State, against the person of its sovereign, etc., then the State concerned shall have priority to ensure punishment.
2. For all other offences, jurisdiction is vested in the authorities of the following States, according to the following order of priority:
 - (1) the authorities of the contracting State within the territory of which the aircraft first lands after the commission of the offence, and the offender has been apprehended;
 - (2) the authorities of the State of the nationality of the aircraft;
 - (3) the authorities of the State within the territory of which the offence has been committed;
 - (4) the State of which the offender is a national.
3. The commander of the aircraft in flight on board of which a penal offence has been committed shall detain the offender and, if so required, transfer him to the competent authorities of the place where the aircraft first lands after the offence was committed. He shall deliver, for the use of the said authorities, as well as of the authorities of the State of the nationality of the aircraft under his command, a report stating the facts relative to the offence and giving all necessary details concerning the identity of the presumed offender, the victim and the witnesses of the punishable acts.
4. Subject to the provisions of Article (para.1 above), if the State within the territory of which the aircraft first lands and the offender of an extraditable offence has been apprehended does not exercise its jurisdiction within a period of, the States having a lower priority may exercise jurisdiction according to the order of priority established in Article (para.2 above).
5. In order to permit these States to exercise their jurisdiction, the State within the territory of which the aircraft first lands and the author of an extraditable offence has been apprehended, shall transfer the said offender to the authorities of the State claiming jurisdiction. Even if the extradition of the offender cannot be lawfully requested, the authorities of the said State shall remit to the authorities of the State claiming jurisdiction all articles and documents which they have collected and which are pertinent to the offence concerned.

NOTE OF EXPLANATION REGARDING PROPOSAL B

1. This principle involves recognition of the community of interests or universality of punishment which, as well from the doctrinal as from the practical point of view, is the most appropriate to the international character of aviation.
2. It avoids the problem raised by the fact that, as it may often happen, the act and the effect of the offence do not coincide in time and place.
3. It solves the difficulty derived of conflicts of jurisdiction in the case of offences committed in airspaces subject to various sovereignties.
4. It makes extradition unnecessary; as is well known, this question is the essential basis of the other systems and cannot be solved when it affects nationals.
5. It avoids the problem of determining on which territory the offence was committed, since it will often give rise to many difficulties due to the speed of the aircraft and the many States which can be overflown.
6. The offender is immediately taken under custody and the procedure can be started immediately as all the elements necessary for the investigation are on hand and the offender can be tried rapidly, which is one of the main ends of penal law. The system has the additional practical advantage of giving preferential jurisdiction to the State which has in its possession both the author and the evidence of the offence.
7. The system satisfies one of the principal aims of punishment which is to repress a crime, especially exemplified in a case where the offence is a grave one against the public order of the State where it becomes manifest. It is indeed difficult to believe that the State of first landing might remain indifferent to the material and obvious manifestation of a crime of violence the author of which lands on its territory. Such indifference is even more inconceivable as the Subcommittee has eliminated the jurisdiction of "passive personality", thus making it possible that the State of first landing may be deprived of the power to prosecute a crime committed against one of its nationals by a person on board an aircraft landing on its territory. Moreover, the proponents of the criterion of first landing believe that their system takes into account national interests which are more evident than those of the State overflown by the aircraft at a high altitude and at considerable speed. It is likely that the State of first landing may generally feel inclined to punish the offence as it may generally be competent under its own law. Therefore, this principle is nothing but the recognition of what will probably happen in practice and it would be unreasonable to establish a system of priority that does not recognise this fact. This principle has particularly been included in the conclusions of the draft discussed by the International Criminal Police Commission in 1954 and cannot be overlooked by jurists, as it has a very practical character.
8. We cannot deny that such system has its drawbacks, the chief of them being that the State of first landing might not be interested in the punishment of the offence or that its law does not provide for such punishment. This, however, is not really a drawback, since we are not advocating for an exclusive competence, but only for the preferent one and, in such case, the other jurisdictions will come into play.

9. A criticism of this system may be based by those who advocate for the jurisdiction of the flag in the opposition shown by some States to having their nationals tried by foreign courts, alleging that there may be substantial differences amongst their penal and procedural systems, particularly as regards the penalties imposed. Besides the fact that a progressive disappearance of those differences is to be expected, particularly as regards the kind of penalties imposed, it has to be taken into account that such drawbacks cannot be solved by this system of the law of the flag, as very often the passengers are not of the same nationality as the nationality of the aircraft.

10. It is possible to introduce a few exceptions to this principle. In the proposal an exception is established in favour of the State affected in its independence, security or credit by the offence. Similarly, some other exceptions could be accepted if they appear to be sufficiently justified.

11. In opposition to the maritime situation where the social community of the ship has a relatively permanent character and possesses the means for the detention of the criminal for an extensive period, the community on board an aircraft is precarious and, under present conditions, has no means of detaining a criminal; moreover, it is dissolved upon landing of the aircraft.

These different reasons support a first priority of the State of first landing, it being understood that this priority indicates only a purely optional jurisdiction which the State concerned may or may not wish to exercise.

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APPENDIX "C"

PROPOSAL C

A.

This Convention applies to any act or omission by a person on board an aircraft in flight, which is punishable by penal law.

B.

1. Any competent State, where the offender is found, may, in accordance with its laws, prosecute him if the act or omission is an offence under its laws.

2. If some other State having a higher priority and also a valid claim to extradite the offender demands him in accordance with an extradition treaty, the holding State shall transfer him to that State.

3. If the State where the offender is found does not prosecute (with a time limit), nothing is to prevent the exercise of jurisdiction by the other States, whether by virtue of extradition treaties or otherwise.

4. If the act is not an offence under the law of the State where the offender is found, the offender shall be delivered to the State with the highest priority which has a valid claim to extradite the offender and which demands him.

5. If the act is not an offence under the law of the State where the offender is found and there is no applicable extradition treaty, the holding State shall have power to hold the offender for (24) hours, shall make all necessary investigations and shall forward the dossier to all other competent States.

6.

In exercising jurisdiction under the Convention, the following order of priority shall apply:

1. The State against whose security or against whose public credit or against whose Sovereign the offence was committed,
2. The State whose nationality the aircraft possesses, but only in the following cases:
 - (a) if the offence was committed on or over the high seas or a territory not subject to the jurisdiction of any State.
 - (b) if it is impossible to determine in the territory of which State the offence was committed.
 - (c) the offence is solely one against discipline on board.
3. The subjacent State (the assumption being that this State can be established).
4. The State whose nationality the offender possesses.
5. The State of first landing.

NOTE:- It will be understood that provisions will be contained in the Convention dealing with the powers of the aircraft commander to secure the person of the offender and possibly in suitable cases to transfer him, in custody, to the authorities of the State of landing: however, it will, in the conception of the draftsmen of this system, not be obligatory upon the commander to hand the offender over to the authorities of the State of landing.

NOTE OF EXPLANATION REGARDING PROPOSAL C

1. The essential quality of any system of priority of jurisdiction must be to take account in a practical manner of the exceedingly varied circumstances in which offences on board aircraft may take place.

- (a) As regards the offences: These may vary from the gravest crimes - such as murder - to minor délits or even contraventions.
- (b) As regards the persons involved: These may all be nationals of the same State as the State of nationality of the aircraft, may all be aliens in that State, or may be partly aliens: they may include members of the crew.
- (c) As regards the flight: The aircraft may be on an inward flight to or on an outward flight from its State of nationality, and its places of landing may be for commercial or for technical reasons or may even be alternative at the discretion of the pilot.

2. It is believed that neither a "State of first landing" nor a "nationality of aircraft (flag)" principle is suitable on practical grounds to meet these varied circumstances (see below paras. 4 and 5).

3. A further requirement must be that the system does not offend against established legal principles. It is a firmly established legal principle that States have jurisdiction over crimes committed in their territory and that they normally desire to exercise that jurisdiction in priority to other States (hence extradition treaties). The fact that in certain circumstances -

- (a) it may be impossible to determine in what territory the crime was committed, or
- (b) the crime is of such a nature (e.g. involving two alien passengers) or committed at such an altitude that the State in whose territory it took place is not interested in punishing the crime

is not a reason for depriving a State of the right to exercise jurisdiction in cases where these conditions do not exist.

4. As regards the State of Landing -

To confer priority on this State in all circumstances is open to the following objections:

- (a) in view of the fact that the offence is (ex hypothesi) not committed in the territory of that State, the priority would be given to a State which, in many cases, would not be competent to deal with it. It is neither desirable nor necessary to oblige States to extend their extra-territorial jurisdiction.

- (b) such a system is only workable if¹ combined with a provision by which the commander is obliged to hand over the offender to the authorities of that State. Such a provision is somewhat unrealistic, takes no account of the different circumstances set out under 1 above, and is calculated to interfere with the speed of air traffic as indeed to constitute a major deterrent against travel by air;
- (c) such a system confers priority on a jurisdiction which does not exist in numerous systems of law, and when it does exist, is a subsidiary jurisdiction often combined with other requirements.
- (d) States cannot be expected to accept a system under which another State is given priority of jurisdiction in respect of crimes (indisputably) committed in their territory.

5. As regards the State of the flag -

To confer jurisdiction on this State in all circumstances is open to the following objections:

- (a) the fact that in certain cases it may be impossible to apply the territorial principle does not justify ignoring it altogether. Even maritime law does not go so far and aircraft penetrate further into States' territory than ships;
- (b) in some cases at least the only practical course will be to deliver the offender to authorities on the ground and for him to be dealt with there;
- (c) if the flag principle is convenient on inward voyages where the persons concerned and the witnesses are nationals of the flag State, this is not necessarily the case on outward voyages where these persons are aliens.

6. Objectives of Proposal C -

- (a) to take account of the fact that in some cases it may be appropriate to hand over the offender to authorities of a State of landing but in others inappropriate;
- (b) in cases where the offender is handed over, to enable the authorities of that State to deal with him (subject to relevant extradition treaties);
- (c) in cases where it is more appropriate to carry the offender to his destination, or to return him to his country of origin, to permit this to be done as to allow the State to which he is delivered to deal with him subject to extradition treaties;
- (d) to provide a flexible system which, while making available the advantage of using the jurisdiction of the State of first landing in suitable cases, also enables the State of the flag or the subjacent State, when these States have a valid legal interest in dealing with the offender, to do so;

(e) to interfere to the minimum extent with established principles of jurisdiction: thus the priority of the subjacent State is recognized but will only take effect -

(i) when it can be established which was the subjacent State,
and

(ii) if that State so desires. If it is so wished, it is possible to limit the cases in which the subjacent State has priority to crimes in which it has a particular interest but this is not thought to be necessary.

7. It should be noted that although in the drafting of Proposal C reference is made to extradition treaties, this is merely for illustration and in order to show how the system would work. It may not be necessary to make any such reference in the text of a convention.

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APPENDIX "D"

PROPOSAL D

1. In the preamble of the Convention, when drafted, reference should be made to the jurisdiction of the subjacent State as a fundamental principle.

2. The priority of jurisdiction should be provided for in the following order:

(a) the State against whose national security the offence was committed;

(b) the State whose nationality the aircraft possesses

(i) if the offence was committed over the high seas or other territory not subject to the jurisdiction of any State, or

(ii) if it is not possible to determine in the territory of which State the offence was committed, or

(iii) if the offence was committed against disciplinary regulations on board, or

(iv) if the jurisdiction of the subjacent State was not established.

(c) the State of which the offender is a national;

(d) the State of first landing.

REASONS:

It is recognized that every State has complete and exclusive sovereignty over the airspace above its territory (Art.1, Chicago Convention).

Therefore, any aircraft (accordingly an offence on board the aircraft) flying over the territory of a State should be, in principle, under the jurisdiction of the subjacent State, and in case of concurrence of several jurisdictions, it is evident that the first priority should be given to the subjacent State.

However, on the other hand, it would be also true that, in most cases, the State flown over would not be interested in exercising its jurisdiction over an offence on board an aircraft flying over its territory.

In other words, the conflict of the jurisdiction between the subjacent State and the State whose nationality the aircraft possesses, might occur solely when the subjacent State insists on exercising its jurisdiction.

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APPENDIX "E"

PROPOSAL E

When the accused is apprehended in a contracting State, then if the act complained of is punishable under its laws and also as to an alien under the law of (a) the State of the nationality of the aircraft or (b) the State in whose territory the act occurred, such State may assume jurisdiction; but if the latter does not assume jurisdiction, the accused shall be delivered to the first contracting State formally requesting extradition which has jurisdiction under this convention.

APPENDIX II

TEXT OF DRAFT CONVENTION
APPROVED BY THE SUBCOMMITTEE ON THE
LEGAL STATUS OF THE AIRCRAFT AT MONTREAL, 1958

Article 1

1. This Convention shall apply in respect of the offences and other acts hereinafter mentioned when committed or done by a person on board any civil aircraft registered in a contracting State, while it is engaged in international air navigation, from the moment it first moves under its own power for the purpose of taking off until the moment it comes to rest at the end of the flight. The Convention shall also apply when such aircraft is on the high seas or any other area outside the territory of any State.

2. This Convention shall not apply to State aircraft. Aircraft used in military, customs and police services shall be deemed to be State aircraft.

Article 2

The offences and acts referred to in Article 1 are such offences as are punishable under the laws of any contracting State and such acts as are specified in Article 5.

Article 3

1. Independently of any other applicable jurisdiction, the State of registration of the aircraft is competent to exercise jurisdiction in accordance with its own law over offences committed on board the aircraft.

2. The criminal jurisdiction of a State in whose territorial airspace the offence was committed, if such State is not the State of registration of the aircraft or the State where the aircraft lands, shall not be exercised in connection with any offence committed on an aircraft in flight, except in the following cases:

- a) if the offence has effect on the territory of such State;

- b) if the offence has been committed by or against a national of such State;
- c) if the offence is against the national security of such State;
- d) if the offence consists of a breach of any rules and regulations relating to the flight and manoeuvre of aircraft in force in such State;
- e) if the exercise of jurisdiction is necessary to ensure the observance of any obligation of such State under an international agreement.

3. In cases other than those referred to in paragraph 2, the State having custody of the suspected offender, if it has no jurisdiction over the offence or does not wish to exercise such jurisdiction, will take all practicable measures, in accordance with the terms of this Convention, to enable jurisdiction to be exercised by the State of registration of the aircraft, or any other State, if competent and desiring to exercise jurisdiction over the offence.

4. Nothing in this Article shall be deemed to create a right to request extradition of any person.

Article 4

Where a final judgment has been rendered by the authorities of one contracting State in respect of a person who has been charged with an offence, such person may not be tried again for the same offence by the authorities of another contracting State unless he is a national of such State and its laws permit such further trial.

Article 5

The individual responsible for the operation and safety of the aircraft (hereinafter called the aircraft commander) shall have the right to impose upon any person who he has reasonable grounds to believe has committed an offence on board the aircraft, or who he has reasonable grounds to believe will jeopardize by his actions the safety of the passengers, crew, cargo or aircraft, measures of restraint when these seem necessary to protect the safety of the passengers, crew, cargo or aircraft, or to enable the aircraft commander to deliver the person so restrained to competent authorities.

Article 6

The aircraft commander shall have the right to request or authorize the assistance of other crew members and of passengers to restrain any person whom under Article 5 he has the right to restrain. Any crew member may also impose such restraint without authorization when immediate restraint reasonably appears to be necessary to protect the safety of the passengers, crew, cargo or aircraft.

Article 7

1. The aircraft commander shall have the right to deliver to competent authorities of any contracting State in the territory of which the aircraft lands any person who he has reasonable grounds to believe has committed an offence on board the aircraft.

2. The aircraft commander shall have the right to detain the suspected offender until the aircraft lands in a place in a contracting State where the authorities agree to detain him.

3. The aircraft commander shall also have the right to deliver any person to the competent authorities of any State in the territory of which the aircraft lands if the safety of the passengers, crew, cargo or aircraft requires that such person be removed from the aircraft.

Article 8

1. The aircraft commander shall retain for delivery to appropriate authorities anything which he considers to be evidence in connection with any apparent offence. The aircraft commander may collect information from any person on board the aircraft in regard to the offence.

2. The aircraft commander shall transmit to the authorities to whom any suspected offender is delivered anything which he has retained as evidence and any information which he has obtained in accordance with paragraph 1.

Article 9

1. The aircraft commander shall report to the appropriate authorities of the State of registration of the aircraft the fact that an apparent offence has occurred on board, any restraint of any person, and any other action taken by him pursuant to this Convention, in such manner as the State of registration may require.
2. The aircraft commander shall, as soon as practicable, notify the appropriate authorities of any contracting State in which the aircraft lands of the fact that an apparent offence involving violence or an act endangering the safety of the passengers, crew, cargo or aircraft has occurred and that the suspected offender is on board.

Article 10

Neither the aircraft commander, other member of the crew, a passenger, the owner nor the operator of the aircraft, shall be liable in any proceedings, civil or criminal, brought in respect either of any reasonable restraint imposed under the circumstances stated in Articles 5 and 6 of this Convention or of other action authorized by Articles 7, 8 and 9.

Article 11

1. Any contracting State shall take custody of any person whom the aircraft commander delivers pursuant to Article 7 upon being satisfied that the circumstances warrant taking such person into custody and the contracting State then assumes such obligation pursuant to its regulations and laws. If the circumstances involve an offence the State having custody shall promptly notify any State in whose territorial airspace the offence was committed and the State of registration of the aircraft of the nature of the apparent offence and the fact that the suspected offender is in custody.
2. The State having custody, if it has no jurisdiction over the offence or does not wish to exercise such jurisdiction, shall make a preliminary investigation of the apparent offence and shall report its findings and such statements or other evidence as it may obtain to any State in whose territorial airspace the offence was committed and the State of registration of the aircraft.

3. If the State having custody has no jurisdiction over the offence or does not wish to exercise such jurisdiction, it shall not retain custody of the suspected offender for more than (blank period) unless some other State having jurisdiction has notified the State having custody of its intention to seek extradition under an arrangement then in existence.

Article 12

In taking any measures for investigation or arrest or otherwise exercising jurisdiction in connection with any offence committed on board an aircraft the contracting States shall pay due regard to the safety and other interests of air navigation and shall so act as to avoid unnecessary delay of the aircraft, passengers, crew or cargo.

Article 13

Nothing in this Convention shall be deemed to affect any immunity, privilege or requirements for special treatment accorded by international law or by any international agreement or arrangement.

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APPENDIX III

REPORT OF THE SUBCOMMITTEE ON THE
LEGAL STATUS OF THE AIRCRAFT

(Montreal, September 1956)

1. The Sub-committee on the Legal Status of the Aircraft held its second full session at the Headquarters of ICAC in Montreal from 9 to 20 September 1958. It held 18 meetings, under the chairmanship of Mr. J.H. Beekhuis (Netherlands). The following members attended:

Mr. J.P. Houle (Canada)
Mr. A. Garnault (France)
Mr. R. Monaco (Italy)
Mr. I. Narahashi (Japan)
Mr. E.M. Loaeza (Mexico)
Mr. J.H. Beekhuis (Netherlands)
Mr. K. Sidenbladn (Sweden)
Mr. R.O. Wilberforce (United Kingdom)
Mr. R.P. Boyle (United States) assisted
by Mr. R.A. Falise (United States).

2. Mr. A. Ambrosini (Italy) and Mr. V.J. Delascio (Venezuela), Chairman and Vice-Chairman, respectively, of the Legal Committee, were present as ex-officio members of the Sub-committee. Messrs. J.C. Cooper and J.G. Gazdik (IATA) and A. Meyer (ICG) attended as Observers.

Need for a Convention

3. At its Geneva meeting, the Sub-committee had considered whether there was a need for a convention concerning offences committed on aircraft. While some members had felt they should study the subject further before formulating a final view on the point, the conclusion generally reached by the Sub-committee was that it was desirable to have such a convention.

The question was re-examined during the present session. Professor Cooper stated that he wished to reserve the position of IATA as to whether such a convention was required at this time. He said that studies of the IATA Legal Committee, based on the actual experience of scheduled international air transport operators did not appear at present to warrant the conclusion of an international convention concerning offences on board aircraft. On the other hand the attention of the Sub-committee was drawn to the fact that certain international organizations⁽¹⁾ had, after study of the subject, made recommendations to ICAO with a view to the preparation of a convention on the subject by the Legal Committee of ICAO.

(1) Including the International Criminal Police Commission, the International Federation of Air Line Pilots Associations; the VIIth International Congress of Penal Law (Athens, 1957); the International Law Association, 1958.

3.1 In assessing the need for a convention, the Sub-committee noted, inter alia, the lack of an international rule concerning extra-territorial jurisdiction of a State in regard to offences committed on aircraft of its nationality engaged in international air navigation; problems of conflict of criminal jurisdictions, and the need to define the powers of the aircraft commander to take necessary measures in respect of acts on board endangering the safety of flight and for the preservation of order over the community on board, the Sub-committee noting in this connection that such community is expected to increase significantly when aircraft of larger types⁽¹⁾ will be operating in the near future. These and other considerations appeared to the Sub-committee to constitute good and sufficient reasons for undertaking the formulation of appropriate rules. In this connection the Sub-committee considered but rejected as being inadequate a suggestion that for the solution of the problems above described it might only formulate a statement of principles to be recommended for adoption in national legislations. For all those reasons, it proceeded to draft a convention.

Text of draft Convention

4. The text of the convention formulated by the Sub-committee appears in the Annex hereto. Its objectives and main features are indicated in the paragraphs following.

Objectives and main features of the draft Convention

5. One important objective of the draft convention is to "fill the gap" in respect of jurisdiction governing offences committed on board aircraft engaged in international air navigation. Some States have enacted laws with extra-territorial application, enabling their authorities to exercise jurisdiction over offences committed on board aircraft of their nationality, for example, whilst over the high seas, but there are others which have not yet done so. While the Sub-committee noted that States were at liberty to enact such extra-territorial laws, nevertheless it felt that a statement of an internationally agreed principle in the matter would serve a useful purpose. Therefore the rule was formulated in the draft convention (paragraph 1 of Article 3) that "Independently of any other applicable jurisdiction the State of registration of the aircraft is competent to exercise jurisdiction in accordance with its own law over offences committed on board the aircraft." In some States whose laws do not now apply extra-territorially over such offences, ratification of the convention may result in incorporation of the above-quoted rule of the convention in their national laws which, thereby, would become applicable to those offences; but in other ratifying States, legislative measures would be necessary, under their constitutional procedures, if they wished to make their laws applicable extra-territorially over offences committed on aircraft of their nationality.

6. Of significant juridical interest is the fact that international operations of aircraft, by their very nature, entail a possibility of a conflict of criminal jurisdictions. This problem is not peculiar to air transport, but some of its aspects acquire special importance in view of the characteristics of air transportation. Therefore the Sub-committee considered the possibility of formulating a system for the avoidance of a conflict of criminal jurisdictions. One solution examined in this connection was that the convention should establish

(1) with 130 to 200 persons on board.

exclusive jurisdiction in one or other of the various States which might be concerned with an offence committed on an aircraft engaged in international air navigation. Thus, it was suggested that the State of registry should be accorded sole jurisdiction in respect of offences committed under specified circumstances, while the subjacent State would have jurisdiction over offences committed under other circumstances. A consequence of such solution would be that the State assigned such jurisdiction would be under some kind of obligation to exercise it in order that an offence may not go unpunished; and another would be that other States would have renounced jurisdiction. Both these consequences were unacceptable to the Sub-committee.

6.1 Another proposal examined by the Sub-committee was to the effect that the convention, while not obliging any State to exercise jurisdiction, should contain a provision according international recognition to the jurisdiction of certain States which may be concerned and establishing a system of priorities amongst them. In this connection different systems of priorities were also considered. The features common to these systems were that a State having a low priority would be obliged, even though it had custody of the offender, to refrain from exercising its jurisdiction until all the other States having higher priority took decisions not to exercise their jurisdictions, and that there would be consequential delay in finally bringing the offender to trial. Also a system of priorities, to be efficiently workable, may need a coordinated network of extradition arrangements amongst all the States concerned.

6.2 After taking the various views into account, the Sub-committee accepted certain principles which are reflected in the articles of the draft convention and which may be summarized as follows:

- (1) the State of registry of the aircraft has competence to exercise jurisdiction over offences committed on board its aircraft (see para. 6 above);
- (2) the jurisdiction of the State of registry is not declared to be exclusive: the concurrent jurisdiction of other States, according to their laws, is not precluded;
- (3) no State is obliged to exercise jurisdiction;
- (4) except in certain cases, a State shall not exercise jurisdiction solely because the aircraft was flying through the airspace of the State, without landing therein, at the time the offence was committed: the exceptions include cases where the offence has effect on the territory of such State, or is against its national security, or constitutes breach of its flight regulations or involved one of its nationals. (The subjacent State may exercise jurisdiction if it is the State of registration of the aircraft or if the aircraft lands in its territory.)

7. The above-mentioned solutions emerged as signifying the largest measure of agreement which seemed practicable after the discussions in the Sub-committee and having regard to the objective of securing acceptance of the convention by as many States as possible.

8. The Sub-committee considered the question of avoidance of unnecessary delay to air services in connection with exercise of jurisdiction, e.g. investigation of an offence or arrest. ICAO has taken measures such as the Annex, on "Facilitation", to the Chicago Convention, designed to obviate delays due to administrative actions, but

these do not relate to the exercise of criminal jurisdiction. The draft convention therefore provides that a State, in exercising jurisdiction over offences committed on aircraft, shall pay due regard to the safety and other interests of air navigation and avoid unnecessary delays of aircraft, passengers or cargo.

9. In the interests of safety of aircraft operations, and for the protection of persons and property, the Sub-committee considered it important that there should be internationally adopted rules which would enable aircraft commanders to maintain order on board, whether in respect of offences or of any acts endangering safety of the aircraft or persons or goods on board an aircraft engaged in international air navigation. It also decided that aircraft commanders so acting should be suitably protected so that they would not be exposed to civil or criminal proceedings in the event of their being obliged to put under reasonable restraint a suspected offender or any person endangering safety of flight or of other persons and goods on board. Consequently the draft convention makes provision for the exercise of appropriate powers by the aircraft commander, and for his protection as above.

10. The draft convention deals with the question of the delivery by an aircraft commander, to the authorities of a State where the aircraft lands, of a person on board who is a suspected offender or a dangerous person. It provides that in certain circumstances such State assumes the obligation to take such person into custody. The aircraft commander is also authorized to collect information from persons on board in regard to an alleged offence and to transmit to the State which has the custody of the offender any information so collected and any article retained as evidence.

11. The above paragraphs are intended to outline the objectives and certain of the considerations present before the Sub-committee in relation to its study of the subject of offences committed on aircraft. A commentary pertaining to the articles of the draft convention is to be prepared by the Secretariat, in accordance with instructions of the Sub-committee, for the approval of the Chairman.

12. The present report, together with the draft convention annexed hereto, is presented to the Legal Committee for its consideration. To these will be added the Secretariat Commentary mentioned above.

13. So far the Sub-committee has confined its study to questions concerning offences committed on board aircraft and related questions concerning the functions of the aircraft commander. There remain for study at its future sessions other aspects of the subject of Legal Status of the Aircraft as outlined in its Report of its session of September 1954.

APPENDIX IV

SECRETARIAT COMMENTARY ON THE DRAFT CONVENTION
ADOPTED BY THE SUBCOMMITTEE ON THE LEGAL STATUS
OF THE AIRCRAFT AT MONTREAL

1. Introduction

The Sub-committee on the Legal Status of the Aircraft, having prepared at its session held in Montreal, in September 1958, a draft Convention relating to offences committed on board aircraft and having adopted a report with respect thereto, directed that a commentary on the draft Convention be prepared by the Secretariat. The present paper constitutes the commentary so prepared and has been approved by the Chairman of the Sub-committee, pursuant to the authorization given him in that behalf by that body.

1.1 It may be noted that in the present commentary the interpretations and opinions are those of the Secretariat and that the Sub-committee, not having seen them, is not necessarily committed thereto, and that the approval of the commentary by the Chairman of the Sub-committee has been accorded in his capacity as Chairman, without prejudice to any view that he, as a member of the Legal Committee, may eventually adopt on any particular question.

2. Scope of the draft Convention

At the outset it may be pointed out that the articles of the draft Convention relate only to substantive questions and that formal articles, as well as the title of the proposed Convention, are left for determination later.

2.1 The scope of the draft Convention is restricted in that it relates only to penal offences committed on aircraft and acts that may endanger the safety of flight. Other acts on or in relation to aircraft and, generally, other aspects of the legal status of the aircraft remain to be studied at future sessions of the Sub-committee. On the other hand, the draft Convention extends beyond the subject "Legal Status of the Aircraft" in that it covers also a part of another subject on the work programme of the Legal Committee, namely the Legal Status of the Aircraft Commander.

3. Article 1, paragraph 1

1. This Convention shall apply in respect of the offences and other acts hereinafter mentioned when committed or done by a person on board any civil aircraft registered in a contracting State, while it is engaged in international air navigation, from the moment it first moves under its own power for the purpose of taking off until the moment it comes to rest at the end of the flight. The Convention shall also apply when such aircraft is on the high seas or any other area outside the territory of any State.

3.1 "offences and other acts": See paragraph 5.1 below.

3.2 "when committed or done by a person on board": The Convention will not apply if the author of the act or omission was not, at the time it took place, on board the aircraft, even though the same may have produced effect on any person or thing on board. Thus it will not apply if a person outside the aircraft shoots another who is inside the aircraft. On the other hand, the Convention will apply if the act or omission took place on board the aircraft but produced an effect outside it.

3.3 "civil aircraft": State aircraft are excluded: see paragraph 4.1 below.

3.4 "registered in a contracting State": Here "contracting State" means a State party to the proposed Convention.

3.5 "while it is engaged": These words require determination of the status of the aircraft concerned at the time of the offence or other act to which the Convention applies.

3.6 "in international air navigation": This expression is not defined in the draft Convention. It is not the same thing as an "international air service" which is defined in Article 96(b) of the Chicago Convention as "an air service /which again means a scheduled air service performed for public transport/ which passes through the airspace over the territory of more than one State". Again, the concept of "international carriage by air" under the Warsaw Convention, which is related to the contract of carriage and the points of departure or destination or intermediate halt specified or contemplated in such contract, is not relevant in the present context. On the other hand, the pertinent question is whether the aircraft itself was, at the time of the occurrence, engaged in international air navigation as distinct from the fact that the air service for which it was being utilized was an international one. Thus it might be that in the case of an international air service of a U.S.A. carrier from Chicago via New York to Europe, there is a change of aircraft at New York, in which event the aircraft used on the sector Chicago-New York, although participating in the operation of an international air service, will not itself be "engaged in international air navigation". (1)

3.7 The Convention will apply to an aircraft of a contracting State even though it might be flying from a non-contracting State to another non-contracting State.

3.8 It is not necessary for application of the Convention that an aircraft should, at the relevant time, be outside the territory of the State in which it is registered. Thus, for example, if a Canadian aircraft left New York on a flight to Montreal and if an offence were committed on board after it entered Canadian airspace, the Convention will apply. On the other hand, the Convention need not necessarily apply merely because an aircraft registered in a contracting State is in the territory of a foreign State: thus, it might be that at the relevant time, that is when an offence is committed, the aircraft might be operating, under a lease or similar arrangement, wholly within the territory of the latter.

(1) Even if there is no change of aircraft, but only a halt, at New York, it may be doubted whether the flight Chicago-New York constitutes "international air navigation".

3.9 An interesting question is whether, for the purpose of the Convention, an aircraft will be deemed to be "engaged in international air navigation" if its flight plan will involve its passage through the airspace of more than one State, or whether, for the application of the Convention, it is necessary that the aircraft should actually pass from the airspace of one State into that of another. Example: A Canadian aircraft has left New York on a flight to Montreal; an offence takes place before it has left the airspace of U.S.A. and the pilot, in order to disembark the suspect, returns to New York or lands at some other place in U.S.A. Presumably the case should be governed by the fact that the intention, at the time of departure from New York, was that the aircraft should be engaged in international air navigation and therefore, in the words of the Convention, "is engaged" accordingly.⁽¹⁾ In such case the Convention will apply and enable the aircraft commander to restrain any person in accordance with Article 5 and invoke the protection provided by Article 10 for such action on his part.

3.10 The question might arise whether an aircraft will be deemed to be "engaged in international air navigation" when its flight plan will involve leaving a national airspace and entering the airspace above the high seas. Example: A Canadian aircraft flies from Montreal in Canada, over the high seas, to Gander which is in Canadian territory, and an offence takes place while the aircraft is over the high seas. If, under the flight plan, the aircraft is scheduled to proceed further eastward to Europe, the incident will, it seems, attract, the application of the Convention: see paragraph 3.9 above. On the other hand, if Gander was the final destination of the aircraft, the position seems to be unclear, although from the practical point of view the question would be relevant only if Canadian law in respect of offences on aircraft engaged in domestic air navigation entailed different consequences to particular individuals from such as would result from application of the proposed Convention.

3.11 "from the moment it first moves under its own power for the purpose of taking off until the moment it comes to rest at the end of the flight": Such definition is necessary because the intention is to exclude the application of the Convention during the period that an aircraft is at rest on the surface within the territory of any State. The words quoted reproduce the definition of the expression "flight time" found in Chapter I of Annex 6 (Operating of Aircraft - International Commercial Air Transport) to the Chicago Convention.⁽²⁾ During the "flight time" as so defined, the aircraft commander is responsible under Section 4.5.1 of the said Annex 6 for the operation and safety of the aircraft and of persons on board. For this reason the said definition was adopted for the purpose of the draft Convention, in preference to the more restricted period adopted for the Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface (1952), wherein "an aircraft is considered to be in flight from the moment when power is applied for the purpose of actual take-off until the moment when the landing run ends". Under the latter Convention, any taxiing operations before power is applied for actual take-off and after the landing run ends are excluded; but some of such taxiing operations are included in the above definition in the draft Convention.

(1) In the case of the footnote to paragraph 3.6 *supra*, the flight plan stipulated a halt at New York after take-off from Chicago.

(2) In the Annex that definition is accompanied by the following explanatory note: "Flight time as here defined is synonymous with the term 'block-to-block' time or 'chock-to-chock' time in general usage which is measured from the time when the aircraft moves from the loading point until it stops at the unloading point".

3.12 "The Convention shall also apply when such aircraft is on the high seas or any area outside the territory of another State": The intention is to dispense with the requirement, in the first sentence of paragraph 1, Article 1, that the aircraft should be in motion in the manner specified and to state that, if the remaining requirements of that sentence are satisfied and if the aircraft is on the surface outside a national territory, then the Convention shall apply even though the aircraft is either at rest or moving in some different manner, e.g., is being towed. All this is sought to be achieved by using the word "also". There may be a question of redrafting in order to clarify the presumed intention which is described in greater detail in paragraph 3.13 below.

3.13 With respect to the foregoing, it may be summarized that -

- (a) the Convention applies during the period that an aircraft - provided it is at that time engaged in international air navigation -
 - (i) is in motion in the manner defined
 - on or over the surface of the territory of any State, whether or not that State is a party to the proposed Convention;
 - on or over the surface of the high seas;
 - on or over any other area outside the territory of any State;
 - (ii) is not in motion as defined, or at all, but is on the surface of the high seas or of any other area outside the territory of a State;
- (b) the Convention does not apply when the aircraft is
 - (i) on the surface of the territory of any State and is not in motion in the manner defined; or
 - (ii) in the airspace above any national territory or on or above the high seas or on or above any area outside a national territory if, at the relevant time, it is not engaged in international air navigation.

4. Article 1, paragraph 2

2. This Convention shall not apply to State aircraft. Aircraft used in military, customs and police services shall be deemed to be State aircraft.

4.1 The statement that aircraft used in military, customs and police services shall be deemed to be State aircraft reproduces Article 3(b) of the Chicago Convention. Like the latter provision, it does not state whether an aircraft used in some service of Government other than military, customs and police service cannot also "be deemed to be" State aircraft.

5. Article 2

The offences and acts referred to in Article 1 are such offences as are punishable under the laws of any contracting State and such acts as are specified in Article 5.

5.1 "offences": The Convention applies only to such offences "as are punishable under the laws of any contracting State". In addition to violation of the penal laws of such a State, one may consider also cases of violation of fiscal, customs, sanitary and certain other laws. A violation of any such law will come under the Convention only if it is regarded by the law of the contracting State concerned as constituting an "offence" and is punishable as such. Thus an act which will be unlawful if done without a licence from the State would be included in the Convention if such act is, by the laws of that State, punishable as an offence.

5.2 Article 2 makes no distinction in regard to gravity of an offence or the punishment relating thereto.

5.3 "punishable under the laws of any contracting State": This provision may seem unduly wide, for it might be that although an act committed on board happens to be punishable as an offence in some contracting State, that State in fact has not the remotest connection with the aircraft or the airspace in which it happens to be or with the suspected offender or any other person affected by the act. On the other hand, it would be difficult to foresee whether some contracting State may not have an interest in a certain act and claim jurisdiction in respect of it.

6. Article 3, paragraph 1

1. Independently of any other applicable jurisdiction, the State of registration of the aircraft is competent to exercise jurisdiction in accordance with its own law over offences committed on board aircraft.

6.1 "Independently of any other applicable jurisdiction": At its earlier meeting in Geneva in 1956 the Sub-committee had noted that national laws of different States conferred jurisdiction on their courts to try offences if one or more of several factors were present. A State, under its national law, might have jurisdiction over an offence committed on board an aircraft if it were -

- (1) the State within the territory (including the airspace) of which the offence was committed;
- (2) the State of nationality of the aircraft;
- (3) a State of landing after the offence was committed (with the alleged offender on board);
- (4) the State whose nationality the offender possesses;
- (5) the State against the security, sovereign or public credit of which the offence was committed;

- (6) the last State of departure of the aircraft;
- (7) the State whose nationality the victim possesses.

6.2 The expression "independently of any other applicable jurisdiction" takes into account the possibility that a State, or more than one, might claim to have jurisdiction under one or other of the above-mentioned grounds. The draft Convention does not repudiate any of them. With respect to one of them (State of registration of the aircraft) the draft Convention contains, in paragraph 1 of Article 3, an express statement that that State is competent to exercise jurisdiction; and with respect to five others, namely those described in (1), (3), (4), a part of (5) and (7) in paragraph 6.1 above, the draft Convention, by mentioning them in paragraph 2 of Article 3, impliedly recognizes such bases of jurisdiction.

6.3 Paragraph 1 of Article 3 does not state or imply that the State of registration of the aircraft has either exclusive jurisdiction or any priority in relation to jurisdiction which might be claimed by some other State in respect of an offence committed on that aircraft.

6.4 "in accordance with its own law": In several States, ratification of or adherence to the proposed Convention will have the effect that they will acquire jurisdiction over offences committed on aircraft of their registration, if their laws do not already so provide. In other States, depending on their constitutional procedures, there would be no such effect and they will have to adopt requisite legislation if their authorities are to acquire such jurisdiction. However, no ratifying or adhering State will be in a position to deny that it is competent to exercise such jurisdiction. This does not imply that the draft Convention in any way makes it legally obligatory upon a State party to it to exercise such jurisdiction. If a State party to the Convention refused to exercise jurisdiction over an offence committed on aircraft of its registration and some other State felt aggrieved by that refusal, such an issue would have to be decided outside the terms of the proposed Convention.

6.5 It is clear that the expression "in accordance with its own law" indicates, apart from the foregoing, that the extent and manner of exercise of jurisdiction by a State will be governed by the national law of that State. Nevertheless, it is no doubt implicit that such national law itself will have to be in conformity with any applicable provision of the proposed Convention, e.g., Article 12 thereof.

7. Article 3, paragraph 2

2. The criminal jurisdiction of a State in whose territorial airspace the offence was committed, if such State is not the State of registration of the aircraft or the State where the aircraft lands, shall not be exercised in connection with any offence committed on an aircraft in flight, except in the following cases:

- a) if the offence has effect on the territory of such State;
- b) if the offence has been committed by or against a national of such State;

- c) if the offence is against the national security of such State;
- d) if the offence consists of a breach of any rules and regulations relating to the flight and manoeuvre of aircraft in force in such State;
- e) if the exercise of jurisdiction is necessary to ensure the observance of any obligation of such State under an international agreement.

7.1 "criminal jurisdiction": This expression, being unqualified, apparently means and includes the exercise of power by a State to conduct any police investigation in regard to an offence or arrest any person in connection therewith or conduct judicial proceedings in relation to that offence.

7.2 "a State": In the context this expression, though unqualified, means a contracting State.

7.3 "territorial airspace": The case contemplated is where the aircraft is flying in the airspace of a given State when the offence is committed but which is not a "State where the aircraft lands". Such landing apparently means, in the context, a landing made subsequent to the commission of the offence.⁽¹⁾ Therefore, the State is free to exercise jurisdiction in a case where the offence is committed after the aircraft has commenced to move "under its own power for the purpose of taking off" (see Article 1, paragraph 1) but before the aircraft has actually left the ground, for in such case the offence is not committed in the "airspace".⁽²⁾

7.4 "shall not be exercised": This expression shows that it is not a mere question of not having priority in regard to jurisdiction, but that the subjacent State must not exercise jurisdiction, except in the cases specifically mentioned in the article. The objective is to ensure on the one hand that the lawful flight of an aircraft over a State without landing therein should not be impeded by the exercise of criminal jurisdiction by the subjacent State and, on the other, to recognize the legitimate interests of the subjacent State in the prosecution of certain offences committed on such overflying aircraft. The solution adopted follows, with certain adaptations, the principle formulated in Article 19, paragraph 1 of the Convention on the Territorial Sea and the Contiguous Zone adopted by the United Nations Conference on the Law of the Sea, at Geneva, on 29 April 1958 (hereinafter referred to as the "Geneva Convention").⁽³⁾

- (1) Thus "the last State of departure" mentioned in (6) of paragraph 6.1 supra is excluded.
- (2) On the other hand it can be doubted whether the words "in the airspace" should be interpreted in such a narrow way.
- (3) Art.19, paragraph 1 of the Convention on the Territorial Sea and the Contiguous Zone:

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed on board the ship during its passage, save only in the following cases:

- (a) If the consequences of the crime extend to the coastal State; or
- (b) If the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; or
- (c) If the assistance of the local authorities has been requested by the captain of the ship or by the consul of the country whose flag the ship flies; or
- (d) If it is necessary for the suppression of illicit traffic in narcotic drugs.

7.5 Cases in which the subjacent State may exercise jurisdiction:
A comparison of clauses (a), (b), (c), (d) and (e) in paragraph 2 of Article 3 with paragraph 1 of Article 19 of the Geneva Convention shows that:

- sub-paragraph (a) of Article 3, paragraph 2 is in line with sub-paragraph (a) of Article 19(1) of the Geneva Convention as to principle although the wording is different;
- sub-paragraph (b) of Article 3, paragraph 2 has no parallel in Article 19(1) of the Geneva Convention. It is, however, in line with the principle adopted by the European Convention on Extradition signed in Paris on 13 December 1957 by 11 States;
- sub-paragraph (c) of Article 3, paragraph 2 of the draft Convention corresponds to sub-paragraph (b) of Article 19(1) of the Geneva Convention, but deviates from the language of the latter in using the expression "national security" in preference to "disturb the peace" or "the good order";
- sub-paragraph (d) takes into account the undertaking of a State under Article 12 of the Chicago Convention "to ensure that every aircraft flying or manoeuvring within its territory ... shall comply with the rules and regulations relating to the flight and manoeuvre of aircraft there in force". In the Geneva Convention, there is no provision corresponding to said sub-paragraph (d) except, probably, in the reference in clause (b) thereof to "the good order of the territorial sea"; (1)
- sub-paragraph (e) of Article 3, paragraph 2 of the draft Convention corresponds to sub-paragraph (d) of Article 19(1) of the Geneva Convention, but instead of referring only to "suppression of illicit traffic in narcotic drugs", extends the concept to "any obligation of such State under an international agreement";
- Article 3, paragraph 2 does not contain a provision like that of sub-paragraph (c) of Article 19(1) of the Geneva Convention whereby the territorial State could exercise its jurisdiction if requested by the aircraft commander. However, the aircraft commander, by merely landing the aircraft in the territory of the subjacent State, could enable that State to exercise jurisdiction if it has any.

(1) However, the application of navigation laws of the coastal State to ships in territorial waters is declared in Article 17 of the Geneva Convention which provides as follows:-

"Foreign ships exercising the right of innocent passage shall comply with the laws and regulations enacted by the coastal State in conformity with these articles and other rules of international law and, in particular, with such laws and regulations relating to transport and navigation."

A corresponding provision as regards aircraft is Article 11 of the Chicago Convention which provides:

"Subject to the provisions of this Convention, the laws and regulations of a contracting State relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of all contracting States without distinction as to nationality, and shall be complied with by such aircraft upon entering or departing from or while within the territory of that State."

8. Article 3, paragraphs 3 and 4

3. In cases other than those referred to in paragraph 2, the State having custody of the suspected offender, if it has no jurisdiction over the offence or does not wish to exercise such jurisdiction, will take all practicable measures, in accordance with the terms of this Convention, to enable jurisdiction to be exercised by the State of registration of the aircraft, or any other State, if competent and desiring to exercise jurisdiction over the offence.

4. Nothing in this Article shall be deemed to create a right to request extradition of any person.

8.1 "In cases other than those referred to in paragraph 2": Taken literally, the "cases" in paragraph 2 are those enumerated in clauses (a) to (e) thereof. According to this interpretation, the effect of paragraph 3 will be that the State having custody of the offender will not have an obligation to take measures to enable the overflow State to exercise jurisdiction in spite of the fact that the Convention itself recognizes that such overflow State is entitled to exercise any jurisdiction it may have in cases (a) to (e) in question.

8.1.1 Another way to interpret the words quoted could be to concentrate on the opening portion only of Article 3, paragraph 2, with the result that the State having custody will not have an obligation to take measures to enable the overflow State to exercise jurisdiction -

- (a) if the offence is committed in the airspace of the State of registration, or
- (b) if the offence is committed in the airspace of a State where the aircraft lands.

In justification of such view it might be considered that in those cases (cases (a) and (b)) it is not necessary to put an obligation on the State having custody of the offender; and, further, that it is proper that the State having custody should assist to enable jurisdiction to be exercised by the overflow State in cases (a) to (e) mentioned in Article 3, paragraph 2. But there would still seem to remain a drafting defect, for the present wording of paragraph 3 of Article 3 does not clearly state that the State having custody has no obligation in those cases where a State is prohibited by the provisions of paragraph 2 of Article 3 from exercising jurisdiction.

8.1.2 Leaving aside questions of drafting, if the intention of paragraph 3 of Article 3 is that the State having custody should take practicable measures to enable jurisdiction to be exercised by the overflow State in cases falling under clauses (a) to (e) of Article 3, paragraph 2, then a question for decision would be whether it is for the State having custody to determine whether or not a given case is governed by clauses (a) to (e) of paragraph 2 of Article 3. In this connection it will have to be borne in mind that such determination will involve such questions as national security, application of flight rules and international agreements of the State overflow, which are factors specified in (c), (d) and (e) of paragraph 2 and in respect of which it is the overflow State which would be better qualified to make a determination.

8.1.3 A further question in connection with the interpretation in paragraph 8.1.1 above is whether there is real justification for not placing upon the State having custody the obligation to extend assistance also to the State of registration or the State where the aircraft lands if the offence was committed in the airspace of either of these latter States. For this and the foregoing reasons, the question arises as to retention of the opening phrase of paragraph 3 of Article 3 or any redrafting of that paragraph.

8.2 "State having custody of the suspected offender": A State will have acquired custody of the suspected offender either by its own action or because the aircraft commander has delivered the offender to the custody of such State pursuant to Articles 7 and 11. Ordinarily it will be the State of first or subsequent landing of the aircraft after the offence was committed. (If a person on an aircraft is arrested by the State prior to the moment when the aircraft moves under its own power for the purpose of taking off, the Convention has no application as stated in Article 1, paragraph 1).

8.3 "will take all practicable measures": This obligation to take practicable measures to enable another State to exercise jurisdiction does not include an obligation to extradite any person: see paragraph 4 of Article 3. As to what such measures may be, see paragraphs 1, 2 and 3 of Article 11.

8.4 "in accordance with the terms of this Convention": The relevant provisions are those in Articles 11, 12 and 13.

8.5 "or any other State": This should presumably read "any other contracting State".

9. Article 4

Where a final judgment has been rendered by the authorities of one contracting State in respect of a person who has been charged with an offence, such person may not be tried again for the same offence by the authorities of another contracting State unless he is a national of such State and its laws permit such further trial.

9.1 "final judgment": This means acquittal or conviction and sentence after trial as is made clear by the words "may not be tried again".

9.2 Since the same act may constitute more than one offence, the question might arise whether the article prohibits a second trial in respect of the same act as constituted the offence charged in the first trial or does not prohibit a second trial in respect of the same act provided the offence charged is a different one. This might happen if the two offences are defined and made punishable under different Statutes or under different sections of the same Statute passed by the same legislature; or the same act might constitute one offence in one contracting State and another in another contracting State; or the same act might be punishable as an offence under a State law and under a Federal law of the same country. The question appears to merit closer examination, particularly with regard to the phrase "for the same offence".

9.3 "another contracting State": Under the article, as drafted, a person remains liable to be tried and punished a second time for the same offence even if he has served out sentence under a conviction by a tribunal in a non-contracting State.

9.4 "national of such State": This exception was introduced since under certain national laws a person tried in a foreign country remains liable to be tried for the same offence in the State of which he is a national.

9.5 Second trial of a foreigner: Under the article as drafted a court in a contracting State is not prohibited from trying a foreigner a second time in respect of the same offence if he has been convicted and punished with respect thereto by another court of the same State.

9.6 Relevance of Article 4 to the purposes of the draft Convention: In those cases where more than one State will have jurisdiction to try a given offence, the question of conflict of such jurisdictions would have been solved if the Convention:

- (a) specified priorities amongst the different States with respect to exercise of jurisdiction, and
- (b) stated that if, in accordance with such rule of priorities, jurisdiction has been exercised by a contracting State, then other such States would forego their right to exercise jurisdiction.

Although the draft Convention does not adopt the solution at (a) above, it seeks to ensure, by adopting the principle of ne bis in idem in Article 4, the same practical result as at (b), namely that once an offender has been tried in a contracting State, there will be an end to conflict of jurisdiction as far as other contracting States are concerned.⁽¹⁾ Also, granted that most States would observe the principle in question, there appear to be certain variations of it in national laws; therefore, its enunciation in specific terms, e.g. as in Article 4, would be in the interests of uniformity in application with respect to offences to which the Convention will apply.

10. Articles 5 - 10: General comments

National legislations on powers and duties of the aircraft commander are not uniform and often incomplete. Most of them merely provide, in line with paragraph 4.5.1 of Annex 6 to the Chicago Convention,⁽²⁾ that the aircraft commander is responsible for the safety of the aircraft and the maintenance of order on board. Few deal with the case where an aircraft is flying outside the State of its registration. The subject "Legal Status of the Aircraft Commander" is on the Work Programme of the Legal Committee. Pending study of it by that Committee, the Council

(1) Subject to the exception, where it is applicable, as regards the State of which the offender is a national.

(2) Paragraph 4.5.1 of Annex 6 to the Chicago Convention:

"The pilot-in-command shall be responsible for the operation and safety of the aircraft and for the safety of all persons on board, during flight time."

of ICAO adopted, on 15 June 1956, a resolution which reads, in part, as follows:

"THE COUNCIL

....

INVITES contracting States to study the question whether their national regulations are adequate, or require any improvements, to enable operators and pilots-in-command of aircraft, including, in particular, aircraft of foreign registry, to discharge effectively their duties and responsibilities in ensuring the safety of their aircraft and any person or thing on board and preventing any unauthorized act with respect thereto

AND RECOMMENDS that States undertake such measures to amend their national regulations as may be necessary to secure the above-mentioned objectives."

10.1 In view of the foregoing, and considering the need to make provision with respect to the powers, duties and responsibilities of the aircraft commander in the event an offence is committed on board an aircraft, Articles 5 to 9 were formulated. These articles give the aircraft commander the right to put any person on board under restraint if he believes, on reasonable grounds, that such person has committed an offence or will jeopardize the safety of the aircraft or persons or things therein, and to detain him as necessary and deliver him to the authorities of any contracting State where the aircraft lands. He is empowered also to collect information from persons on board and to retain anything on board as evidence, for similar delivery. He has to notify the authorities concerned that an apparent offence or act endangering safety has taken place on board. The provisions granting such powers to the aircraft commander and other members of the crew are complemented by one giving them immunity from suit or prosecution (Article 10).

11. Article 5

The individual responsible for the operation and safety of the aircraft (hereinafter called the aircraft commander) shall have the right to impose upon any person who he has reasonable grounds to believe has committed an offence on board the aircraft, or who he has reasonable grounds to believe will jeopardize by his actions the safety of the passengers, crew, cargo or aircraft, measures of restraint when these seem necessary to protect the safety of the passengers, crew, cargo or aircraft, or to enable the aircraft commander to deliver the person so restrained to competent authorities.

11.1 "the individual responsible for the operation and safety of the aircraft": This wording is taken from the definition of "pilot-in-command" in Chapter 1 of Annex 6 to the Chicago Convention. It is applicable to any member of the crew during the period when he is "responsible for the operation and safety of the aircraft"; and he, at such time, will have the powers and privileges of "the aircraft commander" specified in Articles 5 to 10.

11.2 "any person": This includes anyone on board - passenger, crew member or stowaway.

11.3 "has committed an offence": The case of a person about to commit an offence is not covered (unless the act which will constitute such offence will also jeopardize the safety of the aircraft or persons or things on board).

11.4 "on board the aircraft": The aircraft commander will not have the power under this article if the aircraft, being in a national territory, is not in motion in the manner defined in paragraph 1 of Article 1 at the time the offence is committed.

11.5 "will jeopardize by his actions": It seems the article will apply if the person is about to act in a manner endangering safety, without such act actually having taken place. It is immaterial whether such act will or will not constitute an offence.

11.6 "measures of restraint": Only reasonable restraint is authorized - See Article 10.

11.7 "when they seem necessary": This requirement is additional to the stipulation that the aircraft commander "has reasonable grounds to believe".

12. Article 6

The aircraft commander shall have the right to request or authorize the assistance of other crew members and of passengers to restrain any person whom under Article 5 he has the right to restrain. Any crew member may also impose such restraint without authorization when immediate restraint reasonably appears to be necessary to protect the safety of the passengers, crew, cargo or aircraft.

12.1 "right to request": Evidently such right will be meaningful only if appropriate sanction is prescribed in a national legislation implementing the proposed Convention, so that the crew member or passenger so requested will have a legal obligation to assist the aircraft commander. He will be protected under Article 10.

12.2 "immediate restraint reasonably appears to be necessary to protect the safety": A crew member's power to impose restraint without authorization is restricted; it is dependent upon there being a situation of emergency where immediate restraint appears reasonably to be necessary to protect the safety of the aircraft or persons or things therein.

13. Article 7, paragraph 1

1. The aircraft commander shall have the right to deliver to competent authorities of any contracting State in the territory of which the aircraft lands any person who he has reasonable grounds to believe has committed an offence on board the aircraft.

13.1 "right to deliver": If the aircraft commander, exercising such right, disembarks a passenger prior to reaching the destination stipulated in the contract of carriage, both he and the operator will be protected under Article 10 against any suit for breach of contract. Under the Convention he is not under an obligation to deliver the person concerned to the authorities of any State where the aircraft lands.

13.2 "reasonable grounds to believe": The aircraft commander will have to establish that he had such "reasonable grounds to believe", although it is not necessary to establish that an offence was in fact committed.

14. Article 7, paragraph 2

2. The aircraft commander shall have the right to detain the suspected offender until the aircraft lands in a place in a contracting State where the authorities agree to detain him.

14.1 "right to detain": Such right is not limited to detention on the aircraft; therefore, presumably, it may continue to be exercised on the ground if the aircraft is making a temporary halt at an airport. Such right will presumably be displaced if the authorities of the State of landing arrest the alleged offender. But if such State is a contracting State it should take over custody of the offender (see paragraph 21.3 below); or, if it does not do so, it will be bound to respect the aircraft commander's "right to detain" even though under the law of that State the alleged act does not constitute an offence.

15. Article 7, paragraph 3

3. The aircraft commander shall also have the right to deliver any person to the competent authorities of any State in the territory of which the aircraft lands if the safety of the passengers, crew, cargo or aircraft requires that such person be removed from the aircraft.

15.1 The authorities of the State of landing might refuse to allow the person concerned to be disembarked in its territory. In such case the aircraft commander will have to continue the journey with such person on board, exercising, if necessary, his right under Article 5 to place such person under restraint.

16. Article 8, paragraph 1

1. The aircraft commander shall retain for delivery to appropriate authorities anything which he considers to be evidence in connection with any apparent offence. The aircraft commander may collect information from any person on board the aircraft in regard to the offence.

16.1 "retain": If the intention were that the aircraft commander may also "seize" an article which he considers to be evidence, e.g., the weapon with which an offence was committed, then it would be desirable to make that clear by an amendment, but it is believed that such was not the intention.

16.2 "may collect information": While the aircraft commander may question witnesses, the latter are not obliged to answer.

17. Article 8, paragraph 2

2. The aircraft commander shall transmit to the authorities to whom any suspected offender is delivered anything which he has retained as evidence and any information which he has obtained in accordance with paragraph 1.

17.1 Under this provision the State having custody of the suspected offender will obtain also anything retained by the aircraft commander as evidence and any information collected by him.

18. Article 9, paragraph 1

1. The aircraft commander shall report to the appropriate authorities of the State of registration of the aircraft the fact that an apparent offence has occurred on board, any restraint of any person, and any other action taken by him pursuant to this Convention, in such manner as the State of registration may require.

18.1 As the aircraft commander will have multifarious duties in connection with the safe navigation of the aircraft, the manner in which he shall make a report to the authorities of the State of registration of the aircraft is left for determination by that State.

19. Article 9, paragraph 2

2. The aircraft commander shall, as soon as practicable, notify the appropriate authorities of any contracting State in which the aircraft lands of the fact that an apparent offence involving violence or an act endangering the safety of the passengers, crew, cargo or aircraft has occurred and that the suspected offender is on board.

19.1 No written report is required, but the aircraft commander has to inform the landing State of the fact that an apparent offence involving violence or an act endangering safety has occurred and that the person concerned is on board. He has no such duty towards an overflown State, even when clauses (a) to (e) of paragraph 2 of Article 3 appear applicable.

20. Article 10

Neither the aircraft commander, other member of the crew, a passenger, the owner nor the operator of the aircraft, shall be liable in any proceedings, civil or criminal, brought in respect either of any reasonable restraint imposed under the circumstances stated in Articles 5 and 6 of this Convention or of other action authorized by Articles 7, 8 and 9.

20.1 The article does not specify that the relevant action must have been taken in good faith. This is not material insofar as concerns an action taken under Articles 5, 6 or 7, since the aircraft commander has to show in respect thereof that he had "reasonable grounds to believe". In respect, however, of the retention of any property under Article 8 or notifying the name of any person as a "suspected offender" under paragraph 2 of Article 9, there is no stipulation as to "reasonable grounds to believe"; therefore, it may be advisable to stipulate that in respect of such actions the existence of good faith is necessary if the aircraft commander or any of the other persons named in Article 10 is to enjoy the immunity therein specified.

21. Article 11, paragraph 1

1. Any contracting State shall take custody of any person whom the aircraft commander delivers pursuant to Article 7 upon being satisfied that the circumstances warrant taking such person into custody and the contracting State then assumes such obligation pursuant to its regulations and laws. If the circumstances involve an offence the State having custody shall promptly notify any State in whose territorial airspace the offence was committed and the State of registration of the aircraft of the nature of the apparent offence and the fact that the suspected offender is in custody.

21.1 "shall take custody": This obligation of a contracting State will arise if -

- (a) a person is delivered to it by the aircraft commander pursuant to Article 7, and
- (b) if the condition discussed in paragraphs 21.3 and 21.5 are fulfilled.

21.2 "any person": The person may be one whose removal from the aircraft is necessary in the interests of safety, as described in paragraph 3 of Article 7. The dangerous acts of such person, committed or threatened, will presumably also constitute an offence in most cases. If, however, in a particular case that is not so, it seems doubtful whether a contracting State should be obliged to take into custody a person against whom there is not even an allegation that he has committed an offence. But it would be desirable that a State relieve the aircraft commander of a violent and insane person.

21.3 "upon being satisfied that the circumstances warrant taking such person into custody": This condition preserves the right of the State to decline to take the person into custody unless it is satisfied that the circumstances justify doing so. Additional to that condition is the stipulation that the law of the State permits the taking into custody (see paragraph 21.5 below).

21.4 "assumes such obligation": The obligation referred to is the obligation to take custody of the person.

21.5 "pursuant to its regulations and laws": These words qualify "assumes such obligation". They show not only that the manner of taking into custody should be pursuant to the regulations and laws of the State but also that the State is not obliged to take the person into custody unless its existing laws and regulations would justify it doing so.

21.6 "in whose territorial airspace": These words would exclude the obligation to notify a State in whose territory the aircraft, at the time of the offence, was in motion on the surface for the purpose of taking off.⁽¹⁾ Perhaps the expression in question should be replaced by the words "in the territory of which".

(1) But see footnote (2) to paragraph 7.3 supra.

22. Article 11, paragraph 2

2. The State having custody, if it has no jurisdiction over the offence or does not wish to exercise such jurisdiction, shall make a preliminary investigation of the apparent offence and shall report its findings and such statements or other evidence as it may obtain to any State in whose territorial airspace the offence was committed and the State of registration of the aircraft.

22.1 If a State has no jurisdiction over an offence it would usually be lacking the power to make an investigation or to take evidence. Nevertheless, under the above provision, it will be bound to make a preliminary investigation and obtain statements or other evidence. Enabling legislation in that behalf will be necessary in States where ratification of the proposed Convention will not result in the provisions of the Convention becoming the law of the land.

23. Article 11, paragraph 3

3. If the State having custody has no jurisdiction over the offence or does not wish to exercise such jurisdiction, it shall not retain custody of the suspected offender for more than (blank period) unless some other State having jurisdiction has notified the State having custody of its intention to seek extradition under an arrangement then in existence.

23.1 Since paragraph 1 of Article 11 requires a contracting State to take the person concerned into custody, it is pertinent to have a provision specifying the maximum period during which such custody may be retained in cases where the contracting State does not exercise jurisdiction, that is to say, does not proceed to try the offender. The expression "arrangement"⁽¹⁾ will cover not only cases of bilateral or multilateral agreements for extradition but also an arrangement by way of parallel legislation.

24. Article 12

In taking any measures for investigation or arrest or otherwise exercising jurisdiction in connection with any offence committed on board an aircraft the contracting States shall pay due regard to the safety and other interests of air navigation and shall so act as to avoid unnecessary delay of the aircraft, passengers, crew or cargo.

24.1 This article, while not imposing an absolute duty on contracting States, emphasizes the principle that due regard must be paid to the safety of air navigation and its "other interests", which expression would include the regularity and efficiency and the economical aspects of operation by aircraft, and that unnecessary delays should be avoided with respect to aircraft operations.

(1) In the French and Spanish texts of Article 11, paragraph 3, the word is not "arrangement" but "agreement". There is a question of co-ordination of the text of the article in the three languages.

25. Article 13

Nothing in this Convention shall be deemed to affect any immunity, privilege or requirements for special treatment accorded by international law or by any international agreement or arrangement.

25.1 The phrases employed in this article will cover, in addition to diplomatic immunities in respect of arrest, detention or other exercise of jurisdiction, cases where the authorities of one State are bound under any agreements or arrangements to accord special treatment in respect of the members of the armed forces of another.

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APPENDIX V

DRAFT CONVENTION ON OFFENCES AND CERTAIN
OTHER ACTS OCCURRING ON BOARD AIRCRAFT

(Adopted by the Legal Committee at Munich, 1959)

Article 1

1. This Convention shall apply in respect of the offences and other acts hereinafter mentioned when committed or done by a person on board any civil aircraft registered in a Contracting State, while that aircraft is:

- (a) in flight in the airspace of a State other than the State of registration; or
- (b) in flight between two points of which at least one is outside the State of registration; or
- (c) in flight in the airspace of the State of registration if a subsequent landing is made in another Contracting State with the said person still on board; or
- (d) on the surface of the high seas or of any other area outside the territory of any State.

2. For the purposes of this Convention, an aircraft is considered to be in flight from the moment when power is applied for the purpose of actual take-off until the moment when the landing run ends.

3. This Convention shall not apply to State aircraft. Aircraft used in military, customs and police services shall be deemed to be State aircraft; however, any aircraft engaged in the carriage of passengers, cargo or mail for remuneration or hire shall be subject to this Convention.

Article 2

Offences, for the purposes of this Convention, are offences punishable by the penal laws of a Contracting State competent in accordance with Article 3.

Article 3

1. Independently of any other applicable jurisdiction, the State of registration of the aircraft is competent to exercise jurisdiction over offences committed on board the aircraft.

2. The criminal jurisdiction of a State in whose airspace the offence was committed, if such State is not the State of registration of the aircraft or the State where the aircraft lands, shall not be exercised in connection with any offence committed on an aircraft in flight, except in the following cases:

- (a) if the offence has effect on the territory of such State;
- (b) if the offence has been committed by or against a national of such State;

- (c) if the offence is against the national security of such State;
- (d) if the offence consists of a breach of any rules and regulations relating to the flight and manoeuvre of aircraft in force in such State;
- (e) if the exercise of jurisdiction is necessary to ensure the observance of any obligation of such State under an international agreement.

Article 4

Where a final judgment has been rendered by the authorities of one Contracting State in respect of a person for an offence, such person shall not be prosecuted by the authorities of another Contracting State for the same act, if he was acquitted or if, in the case of a conviction, the sentence was remitted or fully executed, or if the time for the execution of the sentence has expired, unless he is a national of such State and its laws permit such further trial.

Article 5

1. When the aircraft commander has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an act which, whether or not it is an offence, may or does jeopardize the safety of the aircraft, or persons or property therein, or which jeopardizes good order and discipline on board, the aircraft commander may impose upon such person measures of restraint which seem necessary:

- (a) to protect the safety of the aircraft, or persons or property therein; or
- (b) to maintain good order and discipline on board; or
- (c) to enable him to deliver the person so restrained to competent authorities.

2. The aircraft commander may require or authorize the assistance of other crew members and may request or authorize, but not require, the assistance of passengers to restrain any person whom he is entitled to restrain. Any crew member or passenger may also take reasonable preventive measures without such authorization when he has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft, or persons or property therein.

3. Such powers of the aircraft commander, crew members and passengers and the powers conferred by Article 6 may be exercised with respect to acts, whether offences or not, of the kind described in paragraph 1 of this Article when committed between the moment when embarkation on board has been completed and the moment when disembarkation has commenced if the flight is one of those described in Article 1, paragraph 1. In the case of a forced landing outside an airport, such powers of the aircraft commander shall continue as to acts committed on board until competent authorities take over the responsibility for the aircraft, persons and property on board.

4. For the purposes of this Convention, the aircraft commander is the individual on board an aircraft who is responsible for the operation and safety of that aircraft.

Article 6

1. The aircraft commander may disembark in the territory of any State in which the aircraft lands any person who he has reasonable grounds to believe has committed a serious offence on board the aircraft, or has committed, or is about to commit, on board the aircraft an act which, whether or not it is an offence, may or does jeopardize the safety of the aircraft, or persons or property therein, or which jeopardizes good order and discipline on board.

2. The aircraft commander may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person who he has reasonable grounds to believe has committed a serious offence on board the aircraft.

Article 7

The aircraft commander shall transmit to the authorities to whom any suspected offender is delivered pursuant to the provisions of Article 6, paragraph 2, relevant evidence and information which, in accordance with the law of the State of registration of the aircraft, are lawfully in his possession.

Article 8

1. The aircraft commander shall report to the competent authorities of the State of registration of the aircraft the fact that an apparent offence has occurred on board, any restraint of any person, and any other action taken pursuant to this Convention, in such manner as the State of registration may require.

2. The aircraft commander shall, as soon as practicable, notify the competent authorities of any Contracting State in which the aircraft lands of the fact that an apparent offence or an act endangering the safety of the aircraft or persons or property therein has occurred and that the suspected person is on board.

Article 9

Neither the aircraft commander, other member of the crew, a passenger, the owner or operator of the aircraft nor the person on whose behalf the flight was performed, shall be liable in any proceedings brought in respect either of any reasonable restraint imposed under the circumstances stated in Article 5 or of the reasonable performance of other action authorized by Articles 6, 7 and 8.

Article 10

1. Any Contracting State shall allow the commander of an aircraft registered in another Contracting State to disembark any person pursuant to Article 6, paragraph 1.

2. Any Contracting State shall take custody of any person whom the aircraft commander delivers pursuant to Article 6, paragraph 2, upon being satisfied that the circumstances warrant taking such person into custody and the Contracting State assumes such obligation pursuant to its regulations and laws. If the circumstances involve an offence the State having custody shall promptly notify any State in whose territorial airspace the offence was committed, the State of registration of the aircraft and the State of nationality of the suspected offender of the nature of the apparent offence and the fact that the suspected offender is in custody.

3. If the State having custody has no jurisdiction over the offence or does not wish to exercise such jurisdiction, it shall make a preliminary investigation of the apparent offence and shall report its findings and such statements or other evidence as it may obtain to any State in whose territorial airspace the offence was committed, the State of registration of the aircraft and the State of nationality of the suspected offender.

Article 11

In taking any measures for investigation or arrest or otherwise exercising jurisdiction in connection with any offence committed on board an aircraft the Contracting States shall pay due regard to the safety and other interests of air navigation and shall so act as to avoid unnecessary delay of the aircraft, passengers, crew or cargo.

APPENDIX VI

REPORT OF THE LEGAL COMMITTEE ON THE DRAFT CONVENTION
ON OFFENCES AND CERTAIN OTHER ACTS OCCURRING ON BOARD
AIRCRAFT ADOPTED BY THE LEGAL COMMITTEE AT LUNICH, 1959

INTRODUCTION

1. This was the first occasion on which the Legal Committee considered the subject of the Legal Status of the Aircraft in substance. It had before it the Draft Convention prepared by its Sub-committee on the Legal Status of the Aircraft at Montreal in September 1958 and the Sub-committee's report thereon, the commentary on that draft prepared by the Secretariat, the comments on the draft received from States and international organizations and the related documentation submitted by the Secretariat.

NEED FOR A CONVENTION

2. The Committee noted the view of the Sub-committee that there is need for an international agreement on the subject of offences committed on aircraft, and the reasons adduced therefor in its report.⁽¹⁾ The Committee agreed with this view, taking into account, in particular, the disparity in the provisions of various national laws related to such matters, the lack in several instances of a law equivalent in the case of aircraft to the rule of international law relating to the application of the law of the flag in the case of ships, and the desirability of unification of certain rules on the subject.

(1) Paragraph 3.1 of LC/WD No. 583:- "In assessing the need for a convention, the Sub-committee noted, inter alia, the lack of an international rule concerning extra-territorial jurisdiction of a State in regard to offences committed on aircraft of its nationality engaged in international air navigation; problems of conflict of criminal jurisdictions, and the need to define the powers of the aircraft commander to take necessary measures in respect of acts on board endangering the safety of flight and for the preservation of order over the community on board, the Sub-committee noting in this connection that such community is expected to increase significantly when aircraft of larger types* will be operating in the near future. These and other considerations appeared to the Sub-committee to constitute good and sufficient reasons for undertaking the formulation of appropriate rules. In this connection the Sub-committee considered but rejected as being inadequate a suggestion that for the solution of the problems above described it might only formulate a statement of principles to be recommended for adoption in national legislations. For all those reasons, it proceeded to draft a convention.

* with 130 to 200 persons on board.

SCOPE OF THE PROPOSED CONVENTION

3. The Draft Convention prepared by the Sub-committee was confined to a treatment of problems relating to penal offences and certain acts prejudicial to the safety of air navigation or persons or property on aircraft or good order and discipline which may take place on board aircraft; it did not deal with incidents on aircraft giving rise to problems of civil law, e.g., contracts, torts, marriages, births and deaths. The Committee agreed that while the latter problems might be examined subsequently, the proposed Convention should deal only with penal offences and dangerous and other acts mentioned above, if committed on board.

3.1 Next the Committee considered whether the provisions in the Draft Convention prepared by the Sub-committee concerning the powers of the aircraft commander should not be omitted from the proposed Convention and dealt with in a separate agreement to be prepared concerning the Legal Status of the Aircraft Commander, but came to the conclusion that the powers of the commander in question were so closely related to the problems arising in respect of penal offences and dangerous acts on board that they ought to be dealt with in the proposed Convention; and this would be without prejudice to the possibility of examining subsequently the subject of the Legal Status of the Aircraft Commander which is included in Part A of the General Work Programme of the Committee.

CRIMINAL JURISDICTION

4. First of all the Committee agreed that a uniform rule should be formulated in the proposed Convention as to the criminal jurisdiction of the State of registration of the aircraft over offences committed on board. It considered that such a rule should be without prejudice to other grounds or bases of criminal jurisdiction, e.g., the jurisdiction of the State in whose territory the aircraft was at the time of the offence, or that of the State of which the offender or the victim was a national, or that of the State whose national security was affected by the offence, and perhaps some others; therefore it formulated the rule which appears in paragraph 1 of Article 3 of the Draft Convention and which reads as follows:-

Article 3

1. Independently of any other applicable jurisdiction, the State of registration of the aircraft is competent to exercise jurisdiction over offences committed on board the aircraft.

4.1 It will be observed that the competence of the State of registration over offences is a separate question from, and does not affect, the entitlement of the State to refrain from actually exercising its jurisdiction in any given case.⁽¹⁾

(1) Secretariat Note: Will a State which becomes a party to the proposed convention be obliged, because of the provisions of paragraph 1 of Article 3, to ensure that its national laws make its authorities "competent to exercise jurisdiction over offences committed on board" an aircraft registered in that State? One view expressed in the Committee was: "Yes". On the other hand certain members definitely said: "No".

CONFLICTS OF JURISDICTION

5. Considering that more than one State may have and claim jurisdiction over a given offence, as mentioned in the foregoing paragraph, the question was considered by the Committee as to the formulation of rules which would avoid or solve problems arising from conflict of criminal jurisdiction. The Committee decided that, except in the single instance of the State overflown without landing, as described in paragraph 5.1 below, a satisfactory solution to such problems of conflict did not appear possible except under a system of priority in regard to jurisdictional claims, combined with an extensive net-work of extradition arrangements; and it further considered that such problems of conflict are not a special characteristic of air navigation and might well be left to be solved under any general system relating to conflicts of criminal jurisdiction that might possibly be evolved in the future.

5.1 Nevertheless the Committee was of the opinion that in the case where a foreign aircraft merely overflies a given State, without landing therein, such State should be prepared, in the general interest of international air navigation, to forego its jurisdiction in relation to offences committed on board the aircraft during such overflight, except in certain cases where it could be important for that State to exercise jurisdiction. This principle goes somewhat beyond that contained in Article 19, paragraph 1, of the Convention on the Territorial Sea and the Contiguous Zone formulated at Geneva on 29 April 1958⁽¹⁾ concerning the restrictions on the criminal jurisdiction of the coastal State in relation to offences on board a foreign ship passing through the territorial sea of that State. The principle, as formulated by the Committee and the exceptions thereto appear in paragraph 2 of Article 3 of the Draft Convention which reads as follows:-

(1) Convention on the Territorial Sea and the Contiguous Zone -

Article 19, paragraph 1 :

"The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed on board the ship during its passage, save only in the following cases:

- (a) If the consequences of the crime extend to the coastal State; or
- (b) If the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; or
- (c) If the assistance of the local authorities has been requested by the captain of the ship or by the consul of the country whose flag the ship flies; or
- (d) If it is necessary for the suppression of illicit traffic in narcotic drugs."

Article 3

2. The criminal jurisdiction of a State in whose airspace the offence was committed, if such State is not the State of registration of the aircraft or the State where the aircraft lands, shall not be exercised in connection with any offence committed on an aircraft in flight, except in the following cases:-

- (a) if the offence has effect on the territory of such State;
- (b) if the offence has been committed by or against a national of such State;
- (c) if the offence is against the national security of such State;
- (d) if the offence consists of a breach of any rules and regulations relating to the flight and manoeuvre of aircraft in force in such State;
- (e) if the exercise of jurisdiction is necessary to ensure the observance of any obligation of such State under an international agreement.

CONDITIONS OF APPLICATION OF THE CONVENTION

6. The Committee considered it important to define accurately the period during which the territorial jurisdiction of a State would be limited in the manner specified in paragraph 2 of Article 3. This is achieved by use of the expression "aircraft in flight" in the said paragraph 2 of Article 3; and the expression is defined in paragraph 2 of Article 1 to mean the period from the moment power is applied for the purpose of actual take-off until the moment the landing run ends. Hence, the territorial jurisdiction of the State is unaffected in respect of any offence committed on a foreign aircraft while the aircraft is at rest or is moving on the ground for taxiing or for any other purpose than for actual take-off. (The application of the Convention in relation to the powers of the aircraft commander, however, pertains to a longer period, as explained in paragraph 8.1 below).

6.1 It may be noted that the expression "in flight" is not used in paragraph 1 of Article 3, so that it might appear that the rule therein stated as to the competence of the State of registration of the aircraft is not restricted to the period "in flight"; but the Convention itself does not apply whilst the aircraft is at rest on the surface of the territory of the State of its registration (see paragraph 1 of Article 1), and hence the provision of paragraph 1 of Article 3 also will not apply in such a case.

6.2 Also, in view of the provisions of paragraph 1 of Article 1, which delimit the applicability of the Convention, the provisions of paragraph 1 of Article 3 as to competence of the State of registration to exercise jurisdiction will not apply in a case where an offence is committed on board whilst the aircraft is either -

- (a) in the airspace of the State of its registration, except when its last place of departure was outside that State or its next landing, or a subsequent landing with the offender still on board, is made at a place outside that State; or
- (b) over the high seas or any other area outside the territory of any State unless the last place of departure or the next landing is outside the State of registration.

6.3 Another condition of application of the Convention is that relating to "offences". For the purpose of application of the provisions of the Convention, offences are defined (see Article 2) as those which are punishable by the penal laws of any Contracting State competent in accordance with Article 3.

6.4 As already stated, and as is specified in paragraph 1 of Article 1, the Convention does not apply unless the offence was committed by a person on board the aircraft.

6.5 An offence or other act on board a State aircraft will be outside the application of the Convention. The Convention will apply if an aircraft is engaged in transportation for remuneration or hire, whether or not it is owned or operated by a State (see paragraph 3 of Article 1).

"NE BIS IN IDEM"

7. Article 4 of the draft Convention provides that, if a person has been acquitted or, in case of a conviction, has undergone lawful punishment, in a Contracting State, in respect of an offence, he shall not be prosecuted in another Contracting State unless he is a national of the latter State. The Committee noted that, whilst most States would observe the principle in question, there are variations in the specific provisions on the subject in national laws and, therefore, its enunciation in the Convention would be in the interests of uniformity in application with respect to offences to which the Convention will apply. Also, whilst the Convention does not purport to solve questions of conflict of criminal jurisdictions, the inclusion in the Convention of the principle enunciated in Article 4 would in ultimate effect result in an end to conflict of jurisdictions on the part of all Contracting States once an offender has been finally adjudged in one Contracting State.

POWERS OF THE AIRCRAFT COMMANDER

8. As already stated, the Committee considered it important that the Convention should specify the competence of the aircraft commander in relation to an offence and certain other acts if committed on board. It noted that national legislations on powers and duties of the aircraft commander are not uniform and often incomplete. It noted also that the Council of ICAO, having in mind the desirability of the formulation of an international agreement on the subject by the Legal Committee, recommended to Contracting States, as an interim measure, that they consider the adequacy of their laws to enable operators and pilots in command of aircraft to discharge effectively their duties and responsibilities in ensuring the safety of their aircraft and any person or thing on board and preventing any unauthorized act with respect thereto, especially when the aircraft is in foreign territory.

8.1 In connection with the above, the Committee considered the kinds of acts which might call for the exercise of powers by the aircraft commander. Some acts might constitute an offence, others a serious offence whilst yet others, without definitely constituting an offence, might be prejudicial to safety or to good order and discipline on board. In situations where such acts take place, the aircraft commander might have to exercise certain powers, for which, therefore, the draft Convention makes provision, particularly the powers to impose restraint on a person on board; to disembark such person when the aircraft lands; to deliver such person to local authorities upon landing; to report or notify competent authorities as to such events on board and of any action taken.

8.2 With regard to the power to impose restraint upon a person on board, the Committee noted that the aircraft commander cannot be expected to have the requisite legal training to judge whether or not an act or omission on board constitutes a penal offence. Therefore, it has so formulated the powers of the aircraft commander in that respect that he need only consider whether such acts are prejudicial to the safety of the aircraft or persons or property therein or to good order and discipline on board. In respect of such acts, the Convention formulates the rule (in paragraph 1 of Article 5) that the aircraft commander may impose upon the person concerned measures of restraint as necessary and also to require or authorize a crew member and to request or authorize, though not require, any passenger to assist in that behalf (paragraph 2 of Article 5). Further, any crew member or passenger is also authorized by the Convention to take reasonable preventive measures, when these are immediately necessary, to protect the safety of the aircraft or persons or property therein (paragraph 2 of Article 5). Such powers are exercisable in respect of the acts above mentioned if they take place from the time embarkation on board has been completed until disembarkation has commenced, but may also be exercisable, in respect of such acts committed on board, in the case of a forced landing outside an airport until competent authorities intervene (paragraph 3 of Article 5).

8.3 In relation to the powers of the aircraft commander described above and also to his competence in the circumstances described in paragraphs 8.4 and 8.5 below, it should be noted that, while such powers and competence are available to him, he is not required by the Convention to exercise them.

8.4 Upon landing, the aircraft commander is entitled (paragraph 1 of Article 6) to disembark any person who he has reasonable grounds to believe has committed on board a serious offence⁽¹⁾ or an act prejudicial to the safety of the aircraft or

(1) "Serious offence" is not defined. The Committee examined certain definitions which were proposed: some of them referred to the character of the act, e.g. that the act affected national security or involved violence or endangered the safety of persons or property on board, others referred to an act which justifies placing the offender under restraint, and yet others described serious offences as those which are punishable by death or imprisonment. None of the proposals was accepted. A proposal that there be no definition of "serious offence" led to a tie vote. Under the draft Convention, the questions will be (1) whether the aircraft commander believes that the act of the alleged offender constitutes a serious offence and (2) whether such belief is based on grounds which are reasonable. If so, he may disembark or deliver the alleged offender when the aircraft lands and will be protected under Article 9.

persons or property on board and the State of such landing, if it is a Contracting State, is obliged to permit such disembarkation (paragraph 1 of Article 10). Such obligation does not impair the competence of that State to deal with the person concerned as it may deem appropriate.

8.5 If the aircraft commander has reasonable grounds to believe that a person has committed a serious offence⁽¹⁾ on board the aircraft, he may, when the aircraft lands in a Contracting State, either disembark that person as stated above or deliver him to the competent authorities (paragraph 2 of Article 6). The Convention obliges a Contracting State to take custody of any person so delivered if the laws of that State so permit and, in addition, the circumstances warrant such action (paragraph 2 of Article 10). The Convention does not place any obligation on such State with regard to subsequent treatment of the alleged offender but that State has to notify certain other States as to such custody and the alleged offence.

8.6 The Convention requires the aircraft commander to transmit to the authorities to whom a suspected offender is delivered by him such evidence and information in relation to the offence as, in accordance with the law of the State of registration of the aircraft, is lawfully in his possession (Article 7).

8.7 The aircraft commander is also required to report to the State of registration any measures of restraint or other action taken by him pursuant to the Convention and also the occurrence of any apparent offence on board (paragraph 1 of Article 8). He must also notify any Contracting State in which the aircraft lands of an apparent offence or an act prejudicial to the safety of the aircraft or persons or property on board (paragraph 2 of Article 8).

PROTECTION OF COMMANDER OR OTHER PERSONS

9. The Committee considered it important to ensure the protection of the aircraft commander or other person concerned from liability in "any proceedings", the intention being that no proceedings, civil or criminal nor any proceedings of an administrative character, such as revocation of a licence, should be taken in respect of any reasonable restraint or the reasonable performance of other action in Article 9 of the draft Convention.

INTERESTS OF AIR NAVIGATION

10. The Committee considered it desirable to formulate a principle in relation, on the one hand, to the legitimate interests of a State exercising jurisdiction in respect of an offence committed on board an aircraft and, on the other, the interests of regular, efficient and economical operation by aircraft and accordingly has included in the Convention the following provision:

Article 11

In taking any measures for investigation or arrest or otherwise exercising jurisdiction in connection with any offence committed on board an aircraft the Contracting States shall pay due regard to the safety and other interests of air navigation and shall so act as to avoid unnecessary delay of the aircraft, passengers, crew or cargo.

(1) See foot-note on page 82.

CHARTERS

11. A matter not dealt with in the draft prepared by the Sub-committee but brought up before the Committee during the Session was the problem of aircraft chartered without crew. One aspect of that problem has been dealt with in the draft Convention prepared by the Committee, namely in the provision of Article 9 which refers not only to the owner or operator of the aircraft, but also "the person on whose behalf the flight was performed". There was discussion in the Committee in regard to the application of the rule enunciated in Article 3 as to "jurisdiction of the State of registration of the aircraft" in those cases where an aircraft is on charter outside the State of its registration for prolonged periods. One solution proposed was as follows:-

"An aircraft chartered without a crew to an operator who is a national of a State other than the State of registration of the aircraft shall, for the purposes of this Convention, be treated as if, for the period of the charter, it was registered in the State of which the charterer is a national."

The proposal, however, was not accepted.

STATUS OF THE DRAFT CONVENTION

12. The Committee, at the close of the Session, considered the question of further progress in regard to study of the subject of offences and other acts committed on board aircraft. The complexities of the problems described above indicated the need of ascertaining the views of States in relation to those problems and the solutions proposed in the draft prepared during the Session. There were also certain matters relating to criminal law and the international enforcement of such law to which the attention of the Committee was drawn during the discussions by the Observer from the International Criminal Police Organization, as to which many Delegates felt the need to obtain instructions from their Governments. The Committee, therefore, considered that the draft Convention should be treated only as a provisional draft, and it decided to refer the draft to the Council with the request that the latter circulate it to the Contracting States and appropriate international organizations for the purpose of obtaining their comments. It was felt that, in making such request for comments, the Council might specifically refer to the fact that the draft deals with aspects of criminal law and procedure on which the comments of States and international organizations would be particularly appreciated. Comments so received could be referred back to the Legal Committee for such action as the Committee may consider necessary upon a study of those comments.

APPENDIX VII

REPORT OF THE SUBCOMMITTEE ON THE LEGAL STATUS
OF THE AIRCRAFT (Montreal, March - April 1962)

Introduction

1. On 27 November 1961 the Council decided that the Chairman of the Legal Committee should be requested to appoint a subcommittee of the Legal Committee to consider the comments received from States and international organizations on the draft convention on offences and certain other acts occurring on board aircraft prepared by the Legal Committee, at its Twelfth Session, held in Munich in 1959.

1.1 Accordingly, the Chairman of the Legal Committee appointed this Subcommittee.

Meetings and Membership

2. The Subcommittee met at the Headquarters of ICAO in Montreal, from 26 March to 5 April 1962. It held eighteen meetings under the chairmanship of Mr. R.P. Boyle (United States of America). The following Members attended:

Mr. J.P. Houle (Canada)
Mr. A. Garnault and Mr. M.P. Lescure (France)
Mr. G. Schmidt-Räntsch (Federal Republic of Germany)
Mr. I. Narahashi and Mr. R. Hirano (Japan)
Mr. J.P. Honig and Mr. G.E. Cathalina (Netherlands)
Mr. C. Gómez Jara (Spain)
Mr. A.W.G. Kean (United Kingdom of Great Britain and Northern Ireland) and
Mr. R.P. Boyle and Mr. J.H. Wanner (United States of America).

2.1 Mr. K. Sidenbladh (Sweden) and Mr. J.B. Diaz (Philippines), Chairman and Vice-Chairman, respectively, of the Legal Committee, were present as ex-officio members of the Subcommittee.

2.2 Observers in attendance were:

Mr. N.H. Errecart (Argentina)
Messrs. J.C. Cooper and J.G. Gazdik (IATA)
Messrs. R.J. Belec and G.W. Reed (ICPO) and
Mr. N.J. Logan (IFALPA).

2.3 Members of the Subcommittee who could not attend were:

Mr. R. Monaco (Italy)
Mr. E.M. Loaeza (Mexico) and
Mr. C. Berezowski (Polish People's Republic, Vice-Chairman
of the Legal Committee and ex-officio member, and
Mr. F.K. Moursi (United Arab Republic).

Preparation of this Report

2.4 The Subcommittee approved the draft of the present report at its final meeting on 5 April and authorized a Group, composed as follows, to establish the final text: Mr. R.P. Boyle, Mr. J.P. Houle, Mr. P. Lescure and Mr. N.H. Errecart. The Group met on 16 and 17 April and approved the present text.

Method of Work

3. The Subcommittee agreed that the Munich draft convention should be considered article by article in the light of the comments which had been filed with the Organization by the States and international organizations.

3.1 It was further agreed that the purpose of the Subcommittee was not to prepare a revised draft convention, but rather, in the light of the comments of States and international organizations and its discussions thereon, to present its own comments and recommendations to the Legal Committee concerning the various articles of the draft convention. This procedure would not, however, preclude the Subcommittee from recommending to the Legal Committee redrafts of certain articles of the Munich draft where it was felt that such redrafts were desirable.

3.2 The Subcommittee considered:

- (a) the comments made by States and international organizations on the Munich draft convention: these are comprised in Working Drafts Nos. 3, 4, 5 and 6 which accompany this report (Working Drafts Nos. 1 and 2 being respectively the draft convention and the report thereon prepared by the Legal Committee at Munich); and
- (b) certain new proposals which were presented to the Subcommittee during its session, namely, those relating to Extradition, "Hijacking" (Unlawful Seizure of Aircraft) and Chartered Aircraft: these are dealt with in paragraphs 34 to 36.3 below.

3.3 With respect to the comments mentioned at (a) in the foregoing subparagraph, it should be mentioned that the Subcommittee gave careful consideration to all of them; those comments in respect of which the Subcommittee recommends specific action are particularly mentioned in this report; the other comments are not so mentioned, except in a few cases where opinion within the Subcommittee was equally, or almost equally, divided.

3.4 Attention is called to the fact that while the Subcommittee has in this report expressed its opinions or recommendations on most of the questions examined by it, it has not done so in some instances. Instead it has referred some questions to the Legal Committee, calling its attention to the necessity of finding solutions. The reason for this is that the questions concerned relate to basic issues which the Subcommittee believes require solution by the Legal Committee itself. Some examples of this are: the problems concerning State aircraft (see paragraph 9.1 below); whether it is obligatory or optional for a State party to the proposed convention to enact laws giving it jurisdiction over offences committed on its aircraft outside its territory (paragraph 15 below); extradition (paragraph 34.2); "hijacking" (paragraph 35.2 below); chartered aircraft (paragraph 36.3 below).

* These Working Drafts are not attached hereto, but will be found in Doc 8302 II/150-2, Legal Committee, Fourteenth Session (Rome, 26 August-15 September 1962), Volume II - Documents, 25-79.

Commentary on the Munich Draft Article by Article

Article 1, paragraph 1, introductory part

4. The Subcommittee noted that the words "other acts" found in the introductory part of Article 1(1) were intended to mean "acts" jeopardizing the safety of the aircraft, or persons or property therein, or jeopardizing good order and discipline on board, as specified in Article 5(1). However, the Subcommittee considered that this was not entirely clear under the present text of Article 1(1) and decided to recommend that the words "other acts" be replaced by the formula used in Article 5(1), so that the text of the introductory portion of Article 1(1) would read as follows:

"1. This Convention shall apply in respect of offences and of acts which, whether or not they are an offence, may or do jeopardize the safety of the aircraft or persons or property therein or which jeopardize good order and discipline on board, when committed or done by a person on board any aircraft registered in a Contracting State, while that aircraft is: ...".

As a result, consequential drafting changes have been recommended in respect of Articles 5(1) and 6(1) (see paragraphs 23.4 and 26.3 respectively).

4.1 The Subcommittee recognized that, while Article 1(1) spoke of offences and acts "committed or done", Article 5(1) referred, in addition, to anticipated acts, thus: "when the aircraft commander has reasonable grounds to believe that a person has committed, or is about to commit ... an act ..." (underlining supplied). However, the Subcommittee considered that the lack of reference to anticipated acts in Article 1(1) would cause no difficulty in the application of Article 5(1).

4.2 In relation to the words "by a person on board" found in the introductory part of Article 1(1), the question was raised whether or not an offence or an act contemplated in Article 1(1) would fall under the convention if the person who had instigated the offence or act was not on board the aircraft at the time of occurrence. The view of the Subcommittee was that according to the present draft of the convention such person must be on board and that it was for the Legal Committee to decide whether or not the scope of the convention should be extended to include offences or acts occurring on board the aircraft while their author was not on board, e.g., a person who sent a package containing a time bomb.

5. The Subcommittee decided to recommend to the Legal Committee that the word "civil" be deleted from the introductory provision of Article 1(1) in view of the existence of the definition of "State aircraft" found in Article 1(3). If the word "civil" was kept in Article 1(1), there might be a conflict between Article 1(1) and Article 1(3). If the Legal Committee decided to delete the word "civil" from Article 1(1), consideration should be given to including a reference to civil aircraft in Article 1(3) along the lines of the statement included in the first sentence of Article 3(a) of the Chicago Convention, which sentence reads as follows:

"This Convention shall be applicable only to civil aircraft, and shall not be applicable to State aircraft."

Article 1, paragraph 1, subparagraphs (a) to (d)

6. The Subcommittee considered that subparagraph (c) should be revised to make it clear that the subparagraph applied not only to an offence committed while the aircraft in question was in flight "in the airspace of the State of registration",

but also while it was in flight between two points in the territory of the State of registration even though over the high seas or areas of undetermined sovereignty. Accordingly, the Subcommittee recommends that subparagraph (c) be redrafted as follows:

"(c) In flight between two points in the territory of the State of registration if a subsequent landing is made in another Contracting State with the said person still on board;"

6.1 The Subcommittee considered that subparagraph (c) as thus redrafted placed no limitation on the right of the State of subsequent landing to exercise jurisdiction. Thus, the convention would apply even where the offence concerned had already come to the knowledge of, and been investigated by, the authorities of the State of registration during an intermediate stop of the aircraft in the State of registration.

6.2 The Subcommittee considered that the words "if a subsequent landing is made in another Contracting State with the said person still on board" require clarification in future drafting. In particular, the question was raised whether the person concerned must have been continuously on board.

6.3 The Subcommittee noted that, while the English text of subparagraph (c) contained the word "still", no equivalent word was found in the French and Spanish texts. Therefore, it decided to recommend that this discrepancy be corrected by the insertion of the words "encore" and "todavía" in the French and Spanish texts respectively.

Article 1, paragraph 2

7. The Subcommittee noted the necessity of so drafting Articles 1(2) and 5(3) as to avoid a conflict between them and to make it clear that the provisions of the latter applied even where the aircraft was not in flight.

Article 1, paragraph 3

8. The Subcommittee noted that certain difficulties could arise in the application of the second sentence of Article 1(3). It could conceivably happen that there might be one civil passenger, one piece of civil cargo or one piece of mail on board a military aircraft, and the carriage of any of these for remuneration or hire would be sufficient to attract the application of the convention to the whole aircraft and to all persons on board, even if none of the latter was a civilian. In view of this problem, the Subcommittee considered it to be necessary that the Legal Committee reexamine the questions of the manner and the extent to which the convention would apply to military, customs or police aircraft. In this connection, the Subcommittee was of the opinion that any aircraft, even one owned or operated by a State, should, if used in the carriage of passenger, cargo or mail for remuneration or hire, be covered by the convention at least in so far as civilians on board were concerned.

9. Another aspect of the problem noted by the Subcommittee was that aircraft not owned by the State, but on charter to the State for military, customs or police services, might be considered to be State aircraft under two different hypotheses:

- (a) the whole capacity was chartered by military, customs or police services:

- (b) only part of the capacity of the aircraft was chartered by military, customs or police services and the balance of the capacity was chartered to private interests.

9.1 The Subcommittee calls attention to the necessity of finding a solution for these problems concerning State aircraft.

Article 2

10. After lengthy debate a majority of the Subcommittee decided to recommend the deletion of Article 2 of the Munich draft. In reaching this conclusion the Subcommittee considered the following matters.

10.1 The Subcommittee noted that the purpose of Article 2 of the Munich draft was to define the term "offences" for the purposes of the convention. Here two questions arose:

- (a) The exact meaning and effect of the term "offences".
- (b) The jurisdiction to which offences must be related in order to come under the convention.

(a) The meaning and effect of the term "offences"

11. One opinion voiced in the Subcommittee was that the offences should be listed in classes, such as, offences against the person and offences against property. Another approach would be to exclude the large number of minor offences that might otherwise fall within the convention by restricting Article 2 to offences which were of a serious nature or were extraditable. A further opinion was that offences subject to the convention should be only those which jeopardized the safety of the aircraft, or of persons or property therein, or which jeopardized good order and discipline on board the aircraft, as in the formula used in Article 5(1) of the Munich draft.

11.1 In regard to another aspect of this question, one opinion was that it should be made clear whether, in the case of Federal States, the penal laws contemplated in that article were those of the Federation or of individual States in the Federation.

(b) The jurisdiction to which offences must be related in order to come under the convention

12. Since Article 2 of the Munich draft provided that the offences subject to the convention were those punishable by the penal laws of a Contracting State competent in accordance with Article 3, the Subcommittee considered the question whether competent jurisdictions under Article 3 of the Munich draft were, on the one hand, merely those of the State of registration of the aircraft and the State in whose airspace the offence was committed, or, on the other hand, any jurisdiction that might be applicable under national law. However, when the Subcommittee had finished its work on Article 3, it became apparent that, if Article 3 was adopted in its new form, Article 2 of the Munich draft would serve no useful purpose. In this regard, it was observed that Article 2 was not needed in order to define anything in Article 3 because the latter article was concerned solely with the question of jurisdiction.

Article 3. paragraph 1 (Introductory Words)

13. The words "Independently of any other applicable jurisdiction" occurring at the beginning of Article 3(1) of the Munich draft raised two difficulties:

- (1) There was the question whether they meant that there was a general concurrence of jurisdiction of the State of registration of the aircraft with the penal jurisdiction of other States imposed for any other reason or under any other legal theory (e.g., nationality of the offender, nationality of the victim, etc.).
- (2) There was a possibility that they could be construed as importing into the convention any jurisdiction that might be applicable under national law.

13.1 One argument adduced in favour of retaining the words "Independently ..." was that to delete them might imply nullifying extraterritorial jurisdiction of a State (not being the State of registration of the aircraft) over its nationals or permanent residents.

13.2 However, it was finally decided to recommend the deletion of those words. At the same time, the Subcommittee decided to recommend that the following text be included in a separate paragraph in Article 3:

"This article does not set aside any basis for criminal jurisdiction which a State might have incorporated into its national laws."

Article 3. paragraph 1 (Second Part)

14. The expression "competent jurisdiction" used in the remaining part of Article 3(1) raised two questions:

- (1) Was it obligatory or optional for a State to enact laws giving it jurisdiction?
- (2) Was it obligatory or optional for a State to try offenders and to apply its penal laws to them?

15. The Subcommittee could not agree on an answer to the first question and calls the attention of the Legal Committee to the necessity of reaching a decision on this question.

16. In regard to the second question, the Subcommittee considered that, while it should be recognized that the State of registration was competent to apply its penal law to offences occurring on board its aircraft outside its territory, that State would be under no obligation to try offenders and apply its penal laws to them.

Article 3, paragraph 2

17. In relation to Article 3(2), the Subcommittee discussed whether or not Article 3 contained a system of priorities. According to one view, the intent of the Munich draft was that there should be absolute concurrence of jurisdiction since a proposal to have a system of priorities had been defeated during the Twelfth Session of the Legal Committee at Munich by a vote of 14 to 5. However, another view was that Article 3(2), provided, in the cases enumerated in subparagraphs (a) - (e), for a priority of the State in whose airspace the offence was committed. In addition, it was noted that, as drafted at Munich, Article 3(2) contained a direct prohibition against the exercise of jurisdiction by the State in whose airspace the offence was committed except in the cases mentioned therein.

18. On a practical level, the Subcommittee decided that the question of priority would be governed largely by the extent to which extradition treaties existed. After exhaustive debate, it decided that it would not recommend any system of priority to the Legal Committee but that it would recommend revision of Article 3(2) in order to make it clear that this provision dealt solely with the problem of keeping interference with air traffic to a minimum and did not establish any sort of priority.

19. Accordingly, the Subcommittee decided to recommend the deletion of the introductory part in Article 3(2) of the Munich draft and the adoption, in its place, of the principle that the State overflown should not oblige the aircraft to land in order to exercise criminal jurisdiction except in the cases enumerated in subparagraphs (a) to (e) of that Article. This action was stated to be without prejudice to the other rights of States under such international instruments as the Chicago Convention and the International Air Services Transit Agreement.

20. The Subcommittee, therefore, recommends that the following text be substituted for the introductory part of Article 3(2) of the Munich draft:

"The State in whose airspace the offence was committed, if such State is not the State of registration of the aircraft, may not compel the aircraft to land in order to exercise its criminal jurisdiction, except in the following cases: ...",

Article 3, paragraph 3 - new paragraph

21. See paragraph 13.2 above.

Article 4

22. The Subcommittee rejected a proposal to delete Article 4, such proposal having been made on the grounds that it was unnecessary and that it was difficult to formulate its principle with accuracy. Among the reasons suggested in favour of retaining the article was that it was necessary in view of the system of concurrent jurisdiction found in the Munich draft convention.

22.1 Although the article was retained, the Subcommittee nevertheless decided to recommend the following amendments to it:

- (1) substitute the words "convicted in" in place of "prosecuted by the authorities of";
- (2) add after the words "national of" the words "or permanently resident in";
- (3) include in Article 4 the principle that a sentence or any part thereof already served should, in the case of subsequent conviction for the same act, be deducted in all cases, including that of a national.

22.2 A proposal to add to Article 4 the words: "or the offence was against the national security of such State" was defeated by a tie vote.

22.3 In view of the foregoing decisions, the Subcommittee recommends the adoption of the following text of Article 4:

"Where a final judgment has been rendered by the authorities of one Contracting State in respect of a person for an offence, such person shall not be convicted in another Contracting State for the same act, if he was acquitted or if, in the case of a conviction, the sentence was remitted or fully executed, or if the time for the execution of the sentence has expired, unless he is a national of, or permanently resident in, such State and its laws permit such further trial." (Note: As indicated above, Article 4 should be completed by the inclusion of the principle concerning deduction for a sentence or any part thereof served abroad.)

Article 5, paragraph 1

23: In view of the decision to include in the introductory part of Article 1(1) the formula taken from the introductory part of Article 5(1) of the Munich draft, the Subcommittee recommends the deletion from Article 5(1) of the words "which, whether or not it is an offence, may or do jeopardize the safety of the aircraft, or persons or property thereon, or which jeopardizes good order and discipline on board," and the substitution therefor of the words "contemplated in Article 1, paragraph (1)".

23.1 The Subcommittee decided to recommend that the expression "measures of restraint" be amended to read "measures including restraint" because the existing expression appeared to specify "restraint" as the only measure which could be taken. It also decided to recommend that the word "measures" should be qualified by the term "reasonable".

23.2 The question was raised whether the expression "which seem necessary" should not be changed so as to provide for a subjective test, namely, "which seem to him to be necessary". It was decided to place this proposal before the Legal Committee without the Subcommittee taking a decision upon it.

23.3 It was agreed to recommend that the word "disembark" should be added in clause (c) before the words "the person" in place of the word "deliver"; and also to insert the words "or deliver such person" after the word "restrained". Clause (c), as thus amended, would read as follows:

"(c) to enable him to disembark the person so restrained or deliver such person to competent authorities."

23.4 In view of the foregoing recommendations, the proposed new text of Article 5(1) would read as follows:

"1. When the aircraft commander has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an act contemplated in Article 1, paragraph (1), the aircraft commander may impose upon such person reasonable measures including restraint which seem to him to be necessary:

- (a) to protect the safety of the aircraft, or persons or property therein; or
- (b) to maintain good order and discipline on board; or
- (c) to enable him to disembark the person so restrained or deliver such person to competent authorities."

Article 5, paragraph 3

24. The Subcommittee agreed to recommend to the Legal Committee that, in the first sentence of Article 5(3), the words "when embarkation on board has been completed and the moment when disembarkation has commenced" should be replaced by the words "when the person concerned has embarked and the moment when he disembarks". Here, it was noted that acts jeopardizing the safety of the aircraft and its contents could occur even if only a single passenger was on board during the period of embarkation or disembarkation. In such a case, even if the doors of the aircraft were open, measures to preserve safety might be so urgently required that crew members could hardly be expected to wait for the intervention of local police.

24.1 In this regard, the Subcommittee invites attention to the comments made in paragraph 7 above.

25. The Subcommittee, therefore, recommends the adoption of the following new text of Article 5(3):

"(3) Such powers of the aircraft commander, crew members and passengers and the powers conferred by Article 6 may be exercised with respect to an act contemplated in Article 1, paragraph 1, when committed between the moment when the person concerned has embarked and the moment when he disembarks if the flight is one of those described in Article 1, paragraph 1. In the case of a forced landing outside an airport, such powers of the aircraft commander shall continue as to acts committed on board until competent authorities take over the responsibility for the aircraft, persons and property on board."

Article 6, paragraph 1

26. In regard to the first part of this provision, it was pointed out that the aircraft commander might have difficulty in deciding whether or not an act constituted an "offence", let alone a "serious offence". This would be so even if he had to make such determination merely by reference to the law of the flag of the aircraft. The difficulty would be compounded if he had, instead, to refer to the penal laws of a wide variety of States. In particular, it was observed that an act which might be a serious offence under the law of one State, might not even be an offence under the law of another.

26.1 The Subcommittee, therefore, agreed that the convention should establish an objective test, i.e., one which would enable the aircraft commander to disembark a person who jeopardizes safety or good order and discipline. Accordingly, it recommends that there be deleted from Article 6(1) the words "has committed a serious offence on board the aircraft, or".

26.2 In order to be consistent with the amendments recommended in the case of Articles 1(1) and 5(1), the Subcommittee recommends the deletion from Article 6(1) of the words "which, whether or not it is an offence, may or does jeopardize the safety of the aircraft, or persons or property therein, or which jeopardizes good order and discipline on board" and the substitution therefor of the words "contemplated in Article 1, paragraph 1".

26.3 Consequently the proposed new text of Article 6(1) reads as follows:

"1. The aircraft commander may disembark in the territory of any State in which the aircraft lands any person who he has reasonable grounds to believe has committed, or is about to commit, on board the aircraft an act contemplated in Article 1, paragraph 1."

26.4 The next question considered by the Subcommittee was whether the aircraft commander should be empowered to disembark a person in "any" State under the circumstances described in Article 6(1), because this would include non-contracting States. In this regard, it was appreciated that the convention would bind only Contracting States and that it could not impose requirements on a non-contracting State. However, the Subcommittee was of the opinion that it would nevertheless be appropriate for the convention to continue to grant the aircraft commander the power of disembarkation under Article 6(1) in any State since such a provision, coupled with the provision giving him immunity from suit (Article 9), would protect him in circumstances where disembarkation was necessary in the interest of safety and good order and discipline, irrespective of whether or not the State of landing was willing to permit the person disembarked to remain in its territory.

Article 6, paragraph 2

27. In connection with Article 6(2), the Subcommittee considered several problems including the following:

- (1) Whether the text of the Munich draft was susceptible of the interpretation that the aircraft commander might hold the person concerned in custody while the aircraft was on the ground in a non-contracting State in order to deliver him to the competent authorities of the next Contracting State in which the aircraft landed.
- (2) Whether the aircraft commander might deliver to the competent authorities of a Contracting State any person on whom he had imposed restraint by virtue of action taken under Article 5.
- (3) Whether Article 6(2) should be confined to the case where the aircraft commander had reason to believe that the person concerned had committed on board an aircraft an act which, in his opinion, was a serious offence under the penal laws of the State of registration.

27.1 Having examined all of the three problems mentioned above, the Subcommittee adopted and recommends the following new text of Article 6(2):

"2. The aircraft commander may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person upon whom he has imposed measures of restraint pursuant to Article 5, if he has reasonable grounds to believe that such person has committed on board the aircraft an act which, in his opinion, is a serious offence according to the penal laws of the State of registration of the aircraft."

27.2 In the case of the first problem, it was recalled that the Legal Committee at Munich had taken a clear decision not to permit the onward carriage of the suspected offender under the circumstances described in item (1) above. (ICAO Legal Committee, Twelfth Session, Vol. I (Minutes), page 187.) That being so, the Subcommittee decided to recommend that there be no exception which would permit the onward carriage of the suspected offender to a Contracting State from a non-contracting State in which a landing had been made. However, the Subcommittee calls the attention of the Legal Committee to the fact that neither the recommended text, nor the Munich text disposes of the possible interpretation mentioned.

Article 8, paragraph 1

28. One criticism made of Article 8(1) was that it served no useful purpose, since the State of registration of the aircraft could always require, under its national laws, the kind of reports contemplated by that provision.

28.1 It was indicated that if Article 8(1) had any virtue at all, it was that the provision would serve as a defence under Article 9 of the Munich draft if an action was brought against an aircraft commander for having made a report of the kind contemplated by Article 8(1). However, the Subcommittee felt that this was a situation which persons reporting offences commonly had to face outside the convention, and that there was no need to have a specific provision covering this point.

28.2 In view of the foregoing, it was agreed to recommend that Article 8(1) be deleted.

Article 8, paragraph 2

29. The Subcommittee did not adopt a proposal to delete Article 8(2). Instead, it decided to recommend that, under the circumstances described in Article 8(2), some notification should be given to the competent authorities of the State where the aircraft intended to land, but that the obligation to notify should apply only in relation to a case where a person on board was under restraint by virtue of the provision of Article 5. In reaching this decision, the Subcommittee noted that, quite aside from any obligation that the aircraft commander might have to give notifications under the convention, he could, in any event, of his own volition, notify the competent authorities of any State of any occurrences on board his aircraft.

29.1 The Subcommittee adopted the following text which it recommends as a substitute for the provisions of Article 8 of the Munich draft:

"The aircraft commander shall, before landing in the territory of a State, with a person on board who is under restraint in accordance with the provisions of Article 5, as soon as practicable, notify the competent authorities of the State where he intends to land of the fact that a person on board is under restraint and of the reasons for such restraint."

Article 9

30. The Subcommittee decided to recommend the deletion of the word "reasonable" before the words "restraint" and "performance" respectively, and, as previously mentioned in paragraph 23.1 above, to introduce the word "reasonable" before the word "measures" in Article 5(1).

30.1 Doubt was expressed as to whether the words "any proceedings" were sufficient to cover not only civil and criminal proceedings but also, as intended by the Legal Committee at Munich, proceedings of an administrative character such, for example, as any which might lead to revocation of a licence of a crew member. The Subcommittee decided that this was a question of drafting which could be considered by the Legal Committee.

Article 10, paragraph 1

31. The Subcommittee decided to call to the attention of the Legal Committee that it appears from the comments of some States that it might be desirable to make it clear that the immigration laws of the State in whose territory a person was disembarked would not be affected by this convention⁽¹⁾; also that any right of the State of disembarkation, under its national law, to require an airline to carry the unwanted passenger away or to pay for his transportation, would not be affected by the convention.

Article 10, paragraph 2

32. The Munich draft does not deal with the question as to what arrangements may be made by the State in whose territory a person is disembarked or delivered by the aircraft commander but the authorities of which State do not wish to detain him. Comments received from certain States indicated the desirability of adding in Article 10 a provision to solve this question. Therefore, the Subcommittee recommends that a provision along the following lines should be included as paragraph 4 in Article 10:

"At the request of the State in whose territory the person is disembarked or delivered, the State of which he is a national, the State of which he is a permanent resident and the State in which he began his journey shall be obliged to admit him into its territory, unless he is a national of, or permanent resident in, the requesting State."

32.1 While accepting the foregoing, some members wished to expand the principle along the following lines:

- (a) that in addition to the States mentioned, the State of destination of the passenger disembarked or delivered should also be obliged to accept him; and
- (b) that as amongst the foregoing States, there should be an order of priority established in regard to the obligation to admit such person.

32.2 Another question raised in the comments of some States with reference to paragraph 2 of Article 10 was to the effect that, if the State where a person is delivered by the aircraft commander does not have jurisdiction or does not wish to exercise it, it should nevertheless be obliged, by a specific provision

(1) See the Minutes of the Twelfth Session of the Legal Committee, Vol. I, pp. 194-197.

in the convention, to arrest such person provisionally, pending the receipt of a request for extradition in accordance with existing treaties. This would be the case only if the elements of an extraditable offence were disclosed. A specific proposal in this connection was that the convention should provide that the delivery of the person concerned by the aircraft commander should be deemed to constitute a request for provisional arrest in order to set in motion the procedures relevant to extradition. In this way the State would be enabled to detain the person concerned provisionally for a short time. These proposals failed to find a majority in the Subcommittee.

32.3 The Subcommittee decided to recommend that the word "apparent" in the English text before the word "offence" in paragraph 2 should be deleted and replaced by the word "alleged".

32.4 It appeared to the Subcommittee that the present drafting of paragraph 2 of Article 10 was unclear in that it probably did not fully bring out the intention of the Munich draft that the State in whose territory a person is delivered by the aircraft commander is under no obligation to take him into custody; that it would take him into custody only if its laws so permitted and further only if the circumstances of the particular case warranted that action; and, lastly, that all its national procedures and laws relevant to safeguarding of human rights, such as the maximum period of detention, the right to have counsel, the right to be informed of the specific reasons for his arrest and so on, would be applicable to the case.

Article 10, paragraph 3

33. In the opinion of the Subcommittee, the present language of the opening portion of paragraph 3 is inaccurate in speaking of "the State having custody". Actually, it might be that the State has refused to take the individual concerned into custody. Therefore, the Subcommittee recommends that the expression "if the State having custody" be replaced by the phrase "if the State to which the person is delivered by the aircraft commander".

33.1 The Subcommittee decided to recommend that the word "apparent" occurring before the word "offence" in the English text of Article 10(3) should be deleted and replaced by the word "alleged".

33.2 Accordingly, the Subcommittee recommends the adoption of the following text of Article 10(3):

"If the State to which the person is delivered by the aircraft commander pursuant to Article 6, paragraph 2, has no jurisdiction over the offence or does not wish to exercise such jurisdiction, it shall make a preliminary investigation of the alleged offence and shall report its findings and such statement or other evidence as it may obtain to any State in whose territorial airspace the offence was committed, the State of registration of the aircraft and the State of nationality of the suspected offender."

Proposed Additional Provisions

Extradition

34. The Subcommittee examined a proposal to introduce the following new article into the convention:

"Nothing in this Convention shall be deemed to create a right to request extradition of any person or an obligation to grant extradition. However, the term "jurisdiction" in any arrangements respecting extradition between States parties to this Convention shall, with respect to an offence to which this Convention applies, be taken to include jurisdiction as specified in Article 3(1) of this Convention."

34.1 The second sentence of the proposal was regarded by some as objectionable, because it would be dangerous to try to modify, by a multilateral treaty, existing bilateral treaties concerning extradition. The exact terms and language of each one of the latter treaties, of which there might be several hundred, would have to be examined and interpreted, before the proposed second sentence of the new article could be accepted and this was impracticable. However it was agreed that it was necessary to consider the problem dealt with by the second sentence.

34.2 In view of the foregoing, the Subcommittee

- (1) recommends that the draft convention include an article reading as follows:

"Nothing in this Convention shall be deemed to create a right to request extradition of any person or an obligation to grant extradition."; and

- (2) calls the attention of the Legal Committee to the problem raised by the second sentence.

"Hijacking" (Unlawful Seizure of Aircraft)

35. A United States proposal (LC/SC "Legal Status 1962" No. 5) was placed before the Subcommittee. In this connection the Subcommittee discussed the problem of the carriage of arms on aircraft.

35.1 There was general agreement that the United States proposal was important. It was noted that this proposal would introduce a description of a particular crime into the draft convention which up till now did not refer specifically to any particular offence.

35.2 The Members of the Subcommittee pointed out that they had not had an opportunity of consulting the authorities in their respective States in regard to the United States proposal because they had received the proposal at a late date. Thus, there had been very little time to consider the important issues arising from the proposal. The Subcommittee considered that the proposal should be examined by the Governments of the Contracting States, so that the Legal Committee, when it met in Rome, on 28 August 1962, would have the views of the Governments before it. It was also the general opinion that, while the proposal could be the subject matter of a separate international agreement, nevertheless it raised questions closely related to the Munich draft convention. Accordingly, the Subcommittee decided to recommend to the Legal Committee to consider the United States proposal in connection with the Munich draft convention.

Chartered Aircraft

36. The Subcommittee considered a suggestion that the convention should include the following provision concerning chartered aircraft:

"An aircraft chartered without a crew to an operator who is a national of a State other than the State of registration of the aircraft shall, for the purpose of this Convention, be treated as if, for the period of charter, it was registered in the State of which the charterer is a national."

36.1 The Subcommittee was given the example of an offence being committed on board an aircraft leased by the operator of the State of registration to an operator located in a State far removed from the State of registration. Such offence might be committed over the high seas on the other side of the world by a person who did not have the remotest connection with the State of registration of the aircraft. Under these circumstances it would be impracticable to insist that the offender should be taken to the State of registration for trial.

36.2 Some uneasiness was expressed in regard to the proposed text, since the nationality of the operator was not necessarily a good basis for constructive registration of a chartered aircraft. For example, the operator might be a person or entity of dual nationality or even a Stateless person.

36.3 The Subcommittee decided to report to the Legal Committee that the problem dealt with by the above-mentioned proposal is an important matter which requires solution, but that the foregoing proposal had some defects. In any event, the Subcommittee noted that the Council had referred Resolution B of the Guadalajara Conference to the Fourteenth Session of the Assembly, and that this Resolution dealt with a very closely related problem. Consequently, the Subcommittee was of the opinion that whatever work was carried out by the Legal Committee on the question of chartered aircraft in relation to the draft convention on offences and other acts occurring on board aircraft should be consistent with the work which ICAO might carry out with respect to Resolution B of the Guadalajara Conference.

37. In the course of making this report on the comments received from States and international organizations on the Munich draft convention, the Subcommittee has made recommendations for redrafting some of the articles of the Munich draft. For convenience, the recommended redraft of each article of the draft convention is set out in the Appendix hereto*, which contains also, for comparison, the Munich text of all the articles.

* The material in the Appendix is set forth immediately below.

Appendix

<u>Text of the Munich draft convention</u>	<u>Text of redraft proposed by the Subcommittee (Montreal, March-April 1962)</u>
<u>Article 1</u>	<u>Article 1</u>
1. This Convention shall apply in respect of the offences and other acts hereinafter mentioned when committed or done by a person on board any civil aircraft registered in a Contracting State, while that aircraft is:	1. This Convention shall apply in respect of offences and of acts which, whether or not they are an offence, may or do jeopardize the safety of the aircraft or persons or property therein or which jeopardize good order and discipline on board when committed or done by a person on board any aircraft registered in a Contracting State, while that aircraft is: (see para. 4 of the Report)
(a) in flight in the airspace of a State other than the State of registration; or	(a) No change
(b) in flight between two points of which at least one is outside the State of registration; or	(b) No change
(c) in flight in the airspace of the State of registration if a subsequent landing is made in another Contracting State with the said person still on board; or	(c) in flight between two points in the territory of the State of registration if a subsequent landing is made in another Contracting State with the said person still on board; or (see para. 6 of the Report)
(d) on the surface of the high seas or of any other area outside the territory of any State.	(d) No change
2. For the purposes of this Convention, an aircraft is considered to be in flight from the moment when power is applied for the purpose of actual take-off until the moment when the landing run ends.	2. No change
3. This Convention shall not apply to State aircraft. Aircraft used in military, customs and police services shall be deemed to be State aircraft; however, any aircraft engaged in the carriage of passengers, cargo or mail for remuneration or hire shall be subject to this Convention.	3. No change (But see paras. 8 and 9.1 of the Report)

Text of the Munich draft convention

Article 2

Offences, for the purposes of this Convention, are offences punishable by the penal laws of a Contracting State competent in accordance with Article 3.

Article 3

1. Independently of any other applicable jurisdiction, the State of registration of the aircraft is competent to exercise jurisdiction over offences committed on board the aircraft.

2. The criminal jurisdiction of a State in whose airspace the offence was committed, if such State is not the State of registration of the aircraft or the State where the aircraft lands, shall not be exercised in connection with any offence committed on an aircraft in flight, except in the following cases:

- (a) if the offence has effect on the territory of such State;
- (b) if the offence has been committed by or against a national of such State;
- (c) if the offence is against the national security of such State;
- (d) if the offence consists of a breach of any rules and regulations relating to the flight and manoeuvre of aircraft in force in such State;
- (e) if the exercise of jurisdiction is necessary to ensure the observance of any obligation of such State under an international agreement.

Text of redraft proposed
by the Subcommittee
(Montreal, March-April 1962)

Article 2

Deleted. (See paras. 10-12 of the Report.)

Article 3

1. The State of registration of the aircraft is competent to exercise jurisdiction over offences committed on board the aircraft. (See para. 13.2 of the Report.)

2. The State in whose airspace the offence was committed, if such State is not the State of registration of the aircraft, may not compel the aircraft to land in order to exercise its criminal jurisdiction, except in the following cases: (see para. 20 of the Report)

- (a) No change
- (b) No change
- (c) No change
- (d) No change
- (e) No change

3. This article does not set aside any basis for criminal jurisdiction which a State might have incorporated into its national laws. (see para. 13.2 of the Report)

Text of the Munich draft convention

Article 4

Where a final judgment has been rendered by the authorities of one Contracting State in respect of a person for an offence, such person shall not be prosecuted by the authorities of another Contracting State for the same act, if he was acquitted or if, in the case of a conviction, the sentence was remitted or fully executed, or if the time for the execution of the sentence has expired, unless he is a national of such State and its laws permit such further trial.

Article 5

1. When the aircraft commander has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an act which, whether or not it is an offence, may or does jeopardize the safety of the aircraft, or persons or property therein, or which jeopardizes good order and discipline on board, the aircraft commander may impose upon such person measures of restraint which seem necessary:

- (a) to protect the safety of the aircraft, or persons or property therein; or
- (b) to maintain good order and discipline on board; or
- (c) to enable him to deliver the person so restrained to competent authorities.

Text of redraft proposed
by the Subcommittee
(Montreal, March-April 1962)

Article 4

Where a final judgment has been rendered by the authorities of one Contracting State in respect of a person for an offence, such person shall not be convicted in another Contracting State for the same act, if he was acquitted or if, in the case of a conviction, the sentence was remitted or fully executed, or if the time for the execution of the sentence has expired, unless he is a national of, or permanently resident in, such State and its laws permit such further trial.

(Note: As indicated in paragraph 22.1 of the report, Article 4 should be completed by the inclusion of the principle concerning deduction for a sentence or any part thereof served abroad.)
(see para. 22.3 of the Report)

Article 5

1. When the aircraft commander has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an act contemplated in Article 1, paragraph 1, the aircraft commander may impose upon such person reasonable measures including restraint which seem to him to be necessary: (see para. 23.4 of the Report)

- (a) No change
- (b) No change
- (c) to enable him to disembark the person so restrained or deliver such person to competent authorities. (see para. 23.4 of the Report)

Text of the Munich draft convention

2. The aircraft commander may require or authorize the assistance of other crew members and may request or authorize, but not require, the assistance of passengers to restrain any person whom he is entitled to restrain. Any crew member or passenger may also take reasonable preventive measures without such authorization when he has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft, or persons or property therein.

3. Such powers of the aircraft commander, crew members and passengers and the powers conferred by Article 6 may be exercised with respect to acts, whether offences or not, of the kind described in paragraph 1 of this Article when committed between the moment when embarkation on board has been completed and the moment when disembarkation has commenced if the flight is one of those described in Article 1, paragraph 1. In the case of a forced landing outside an airport, such powers of the aircraft commander shall continue as to acts committed on board until competent authorities take over the responsibility for the aircraft, persons and property on board.

4. For the purposes of this Convention, the aircraft commander is the individual on board an aircraft who is responsible for the operation and safety of that aircraft.

Article 6

1. The aircraft commander may disembark in the territory of any State in which the aircraft lands any person who he has reasonable grounds to believe has committed a serious offence on board the aircraft, or has committed, or is about to commit, on board the aircraft an act which, whether or not it is an offence, may or does jeopardize the safety of the aircraft, or persons or property therein, or which jeopardizes good order and discipline on board.

Text of redraft proposed
by the Subcommittee
(Montreal, March-April 1962)

2. No change

3. Such powers of the aircraft commander, crew members and passengers and the powers conferred by Article 6 may be exercised with respect to an act contemplated in Article 1, paragraph 1, when committed between the moment when the person concerned has embarked and the moment when he disembarks if the flight is one of those described in Article 1, paragraph 1. In the case of a forced landing outside an airport, such powers of the aircraft commander shall continue as to acts committed on board until competent authorities take over the responsibility for the aircraft, persons and property on board.
(see para. 25 of the Report)

4. No change

Article 6

1. The aircraft commander may disembark in the territory of any State in which the aircraft lands any person who he has reasonable grounds to believe has committed, or is about to commit, on board the aircraft an act contemplated in Article 1, paragraph 1. (see para. 26.3 of the Report)

Text of the Munich draft convention

2. The aircraft commander may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person who he has reasonable grounds to believe has committed a serious offence on board the aircraft.

Article 7

The aircraft commander shall transmit to the authorities to whom any suspected offender is delivered pursuant to the provisions of Article 6, paragraph 2, relevant evidence and information which, in accordance with the law of the State of registration of the aircraft, are lawfully in his possession.

Article 8

1. The aircraft commander shall report to the competent authorities of the State of registration of the aircraft the fact that an apparent offence has occurred on board, any restraint of any person, and any other action taken pursuant to this Convention, in such manner as the State of registration may require.

2. The aircraft commander shall, as soon as practicable, notify the competent authorities of any Contracting State in which the aircraft lands of the fact that an apparent offence or an act endangering the safety of the aircraft or persons or property therein has occurred and that the suspected person is on board.

Text of redraft proposed
by the Subcommittee
(Montreal, March-April 1962)

2. The aircraft commander may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person upon whom he has imposed measures of restraint pursuant to Article 5, if he has reasonable grounds to believe that such person has committed on board the aircraft an act which, in his opinion, is a serious offence according to the penal laws of the State of registration of the aircraft. (see para. 27.1 of the Report)

Article 7

No change

Article 8

1. Deleted (see para. 28.2 of the Report)

The aircraft commander shall, before landing in the territory of a State with a person on board who is under restraint in accordance with the provisions of Article 5, as soon as practicable, notify the competent authorities of the State where he intends to land of the fact that a person on board is under restraint and of the reasons for such restraint. (see para. 29.1 of the Report)

Text of the Munich draft convention

Article 9

Neither the aircraft commander, other member of the crew, a passenger, the owner or operator of the aircraft nor the person on whose behalf the flight was performed, shall be liable in any proceedings brought in respect either of any reasonable restraint imposed under the circumstances stated in Article 5 or of the reasonable performance of other action authorized by Articles 6, 7 and 8.

Article 10

1. Any Contracting State shall allow the commander of an aircraft registered in another Contracting State to disembark any person pursuant to Article 6, paragraph 1.
2. Any Contracting State shall take custody of any person whom the aircraft commander delivers pursuant to Article 6, paragraph 2, upon being satisfied that the circumstances warrant taking such person into custody and the Contracting State assumes such obligation pursuant to its regulations and laws. If the circumstances involve an offence the State having custody shall promptly notify any State in whose territorial airspace the offence was committed, the State of registration of the aircraft and the State of nationality of the suspected offender of the nature of the apparent offence and the fact that the suspected offender is in custody.

Text of redraft proposed
by the Subcommittee
(Montreal, March-April 1962)

Article 9

Neither the aircraft commander, other member of the crew, a passenger, the owner or operator of the aircraft nor the person on whose behalf the flight was performed, shall be liable in any proceedings brought in respect either of any restraint imposed under the circumstances stated in Article 5 or of the performance of other action authorized by Articles 6, 7 and 8. (see para. 30 of the Report)

Article 10

1. No change
2. No change except that in the English text the word "apparent" before "offence" is to be changed to "alleged". (see para. 32.3 of the Report)

Text of the Munich draft convention

3. If the State having custody has no jurisdiction over the offence or does not wish to exercise such jurisdiction, it shall make a preliminary investigation of the apparent offence and shall report its findings and such statements or other evidence as it may obtain to any State in whose territorial airspace the offence was committed, the State of registration of the aircraft and the State of nationality of the suspected offender.

Article 11

In taking any measures for investigation or arrest or otherwise exercising jurisdiction in connection with any offence committed on board an aircraft the Contracting States shall pay due regard to the safety and other interests of air navigation and shall so act as to avoid unnecessary delay of the aircraft, passengers, crew or cargo.

No provision concerning extradition appears in the Munich draft.

Text of redraft proposed
by the Subcommittee
(Montreal, March-April 1962)

3. If the State to which the person is delivered by the aircraft commander pursuant to Article 6, paragraph 2, has no jurisdiction over the offence or does not wish to exercise such jurisdiction, it shall make a preliminary investigation of the alleged offence and shall report its findings and such statements or other evidence as it may obtain to any State in whose territorial airspace the offence was committed, the State of registration of the aircraft and the State of nationality of the suspected offender. (see para. 33.2 of the Report)

4. At the request of the State in whose territory the person is disembarked or delivered, the State of which he is a national, the State of which he is a permanent resident and the State in which he began his journey shall be obliged to admit him into its territory, unless he is a national of, or permanent resident in, the requesting State.
(see para. 32 of the Report)

Article 11

No change

EXTRADITION

Nothing in this Convention shall be deemed to create a right to request extradition of any person or an obligation to grant extradition.
(see para. 34.2 of the Report)

History of the Work in ICAO
on the Legal Status of the Aircraft

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PROBLEMS CONCERNING CHARTERED AIRCRAFT
IN RELATION TO THE DRAFT CONVENTION

(Presented by the Secretariat)

1. During the preparation of the draft Convention on Offences and Certain Other Acts Occurring on Board Aircraft, the Legal Committee of ICAO noted that there might be problems concerning application of the provisions of the draft Convention in the case of an aircraft chartered on a barehull basis. For lack of time to study such problems itself, the Committee decided that these problems should be particularly studied by a Subcommittee which it had appointed to study the subject matter of Resolution B of the Guadalajara Conference of 1961.⁽¹⁾

2. The above-mentioned Subcommittee met in Montreal from 18 to 28 March 1963. It prepared two reports, namely, one on the subject matter of Resolution B of the Guadalajara Conference and another on the problems concerning charter of aircraft on a barehull basis in relation to the draft Convention mentioned above. ... The latter report is attached hereto in order that the Conference may take it into consideration.

NOTE: The other report, namely, that on Resolution B of the Guadalajara Conference is not related to the draft Convention before the Conference, and therefore does not constitute a document of the Conference. However, a copy of this report can be made available if any delegate should wish to have it for his information.

(1)

The text of Resolution B of the Guadalajara Conference reads:

"THIS CONFERENCE

RECOGNIZING that the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier deals with certain aspects of the charter and hire of aircraft and that, further, the necessity arises also to deal with the legal problems affecting the regulation and enforcement of air safety which have been experienced by certain States when an aircraft registered in one State is operated by an operator belonging to another State,

URGES the International Civil Aviation Organization to study those problems in the light of the most recent experience, with a view to achieving greater safety of air navigation."

SUBCOMMITTEE ON RESOLUTION B OF THE GUADALAJARA CONFERENCE

(Montreal, March 1963)

REPORT

Introduction

1. The Legal Committee at its Fourteenth Session, decided to establish a subcommittee with the following terms of reference:

"To study this subject, namely, legal problems affecting the regulation and enforcement of air safety which have been experienced by certain States when an aircraft registered in one State is operated by an operator belonging to another State. This subcommittee should also study, in particular, the problems concerning charter on a barehull basis in relation to the draft Convention on Offences and Certain Other Acts Occurring on Board Aircraft: See paragraph 23⁽¹⁾ of the report at Annex D hereto."

2. On 3 December 1962 (XLVII-5), the Council decided to convene the Subcommittee to meet in Montreal on 18 March 1963.

2.1 The Chairman of the Legal Committee appointed the Subcommittee, the membership of which is given in paragraphs 3 and 3.1.

(1) Para. 23: "The Committee considered a proposal to include in the draft convention a provision concerning chartered aircraft, as follows: 'An aircraft chartered on a barehull basis to an operator who is a national of a State other than the State of registration shall be treated for the purpose of this Convention as if throughout the period of the charter it was registered in that other State'. The Committee decided not to include such a provision because, in its opinion, the problem in question requires to be more fully studied than was practicable at this session. The Committee decided that any solution which might be necessary should be sought in connection with the proposed study of the subject matter of Resolution "B" of the Guadalajara Conference."

Meetings and membership

3. The Subcommittee met at the Headquarters of ICAO in Montreal, from 18 March to 28 March 1963 and held seventeen meetings under the chairmanship of Mr. J.P. Honig (Netherlands). The following attended:⁽¹⁾

Mr. P. Lescure ⁽²⁾	France
Mr. N. Ben Yehuda	Israel
Mr. S. Cacopardo	Italy
Mr. A. Francoz Rigalt	Mexico
Mr. S.O. Okunribido	Nigeria
Mrs. K. Miszewska	Polish People's Republic
Mr. K. Sidenbladh	Sweden
Mr. A.W.G. Kean	United Kingdom
Mr. R.P. Boyle	United States of America

3.1 Mr. R. Golstein (Belgium), Chairman of the Legal Committee, and Messrs. J.P. Houle (Canada) and U.J. Fernández Tavelli (Argentina), Vice-Chairmen of the Legal Committee were present as ex-officio members of the Subcommittee.

3.2 Observers in attendance were Messrs. J.C. Cooper and J.G. Gazdik (IATA).

3.3 The Subcommittee wishes to record its appreciation of the valuable contribution made to its work by Mr. J.C. Cooper, the IATA Observer.

(1) Representatives of Japan and Senegal did not attend.

(2) Attended in place of Mr. A. Garnault.

Method of work

4. The Subcommittee decided to prepare two separate reports on the questions before it. This report⁽¹⁾ is concerned only with a study of the problems concerning charter on a barehull basis in relation to the draft Convention on Offences and Certain Other Acts Occurring on Board Aircraft.

The basic problem

5. The Subcommittee considers that it will be competent for every State ratifying the Convention to exercise its jurisdiction, as declared in Article 2(1) thereof, over offences committed on board aircraft of its registration wherever such aircraft may be, and that it would make no difference as a matter of law if such aircraft were leased without crew⁽²⁾ to a person who is not a national of such State.

5.1 However, certain members of the Subcommittee thought that there was a problem in that such jurisdiction might not in practice be effectively exercisable when the aircraft was in the hands of a foreign lessee and remained outside the State of registration for a substantial period. In such a case the State of registration might have great difficulty in taking effective enforcement measures in respect of offences committed on board the aircraft due to its inability to bring before its courts witnesses, evidence and, when extradition is unavailable, the offender. Furthermore, it may be inappropriate for an offender to be tried and imprisoned in the State of registration which may be far removed from the place where the offence was committed or where the offender normally resides. In the circumstances, it was considered that the State of registration might not be willing to prosecute in all cases because, the aircraft having been leased without crew, that State might find its connection with, and responsibility for, the aircraft somewhat attenuated. Accordingly, the basic problem appeared to be that an offender could escape being tried because, on the one hand, the State of registration might not be able or wish to exercise jurisdiction, while, on the other hand, the State of which the operator was a national and in whose territory the aircraft would most probably have its base of operations would not have any right expressly conferred by the Convention to exercise jurisdiction.

(1) The other report, which is concerned with a study of the legal problems mentioned in the first part of the terms of reference given above (paragraph 1) will be placed before the Legal Committee at its Fifteenth Session.

(2) The terms of reference of the Subcommittee speak of "charter on a barehull basis". The Subcommittee interprets this expression as meaning an aircraft leased without crew. See paragraph 12.

Solutions

6. As stated above, the Subcommittee considered a number of possible solutions for the basic problem before it. However, it agreed that, in view of its special status as a study group reporting to a diplomatic conference, the most appropriate action it could take would be to make a systematic presentation of the various solutions suggested along with certain explanations in regard to each of the solutions. The statement of these solutions as given below (paragraphs 7-19) is not meant to be construed as an endorsement of any or all of these solutions by the Subcommittee.

Solution 1: Proposal before the Legal Committee at its
Fourteenth Session

7. The Subcommittee began with a discussion of the following proposal which had been submitted to the Legal Committee at its Fourteenth Session, such proposal being in effect the basic text referred to the Subcommittee for consideration:

"An aircraft chartered on a barehull basis to an operator who is a national of a State other than the State of registration shall be treated for the purpose of this Convention as if throughout the period of the charter it was registered in that other State."

One difficulty raised by this proposal was that it might appear to disturb the concept whereby an aircraft was considered to have only one nationality at a time. The introduction of anything resembling dual nationality might create problems of international law and, in particular, might give rise to difficulties under the Chicago Convention. Another difficulty was that the effect of that solution would be to cut out the jurisdiction of the State of registration.

8. It was suggested to the Subcommittee that the solution for the difficulty just mentioned would be to provide for the jurisdiction of the State of the lessee, not through a device of fictitious or constructive registration, but by recognizing that a certain legal position would come into being upon the happening of a certain fact. Therefore, the Subcommittee was presented with a proposal to the effect that the existence of a lease of an aircraft without crew to a national of a State other than the State of registration would render the State of that person (i.e., the State of the lessee) competent to exercise jurisdiction over offences committed on board the aircraft. This principle will be discussed in some detail below and it has been mentioned at this point only to indicate that the Subcommittee did not retain the proposal placed before the Legal Committee at its Fourteenth Session.

Solution 2: No action should be taken to include in the draft
Convention provision for jurisdiction of the State
of the lessee

9. One view expressed was that it was unnecessary to provide expressly in Article 2 of the draft Convention that the State of the lessee would have jurisdiction over offences committed on board an aircraft leased without crew. The reason for this view was that Article 2(4) made it clear that Article 2 did not affect any jurisdiction established by national law, and the State of which the lessee was a national could so establish its jurisdiction.

10. There were two principal criticisms of this reliance on Article 2 (4) as affording a solution of the problem before the Subcommittee.

10.1 Firstly, it was said that Article 2 (4) did not provide any basis for the establishment by a contracting State of a jurisdiction over aircraft leased without crew and operated by its nationals because this was a novel kind of jurisdiction for which there was no existing precedent. Therefore, the Convention should contain a positive statement recognizing such a jurisdiction should a contracting State desire to establish it in its laws. This would also have the effect of encouraging contracting States to exercise such jurisdiction and additionally such a specific provision would further bring desirable uniformity in the legal systems relating to international air transport. In addition, a statement of the kind envisaged emanating from an international body would have the effect of encouraging States to take the action necessary to fill the practical gap which, in the view of some, existed in the case of offences committed on board an aircraft leased by a national of a State other than the State of registration and operated outside the State of registration.

10.2 The second criticism of Article 2 (4) was concerned with the language of the Rome draft. Some members considered that it was unnecessary to include the new provision since, in their view, Article 2 (4) already applied not only to existing jurisdictions, but also to jurisdictions that might be included in national laws in the future. However, other members considered that Article 2 (4) could be construed in a more restrictive manner so as to apply only to those jurisdictions existing at the time the Convention was ratified. The Subcommittee agreed that, as this matter involved a possible ambiguity in the language of Article 2 (4), it should be brought to the attention of the Diplomatic Conference.

Solution 3: To include in Article 2 of the draft Convention a specific provision embodying the principle of the concurrent jurisdiction of the State of the lessee

11. During the discussion of the basic text referred to the Subcommittee by the Legal Committee previously outlined in paragraph 7 several suggestions as to alternative drafting were made by some members of the Subcommittee which finally resulted in an alternative text which meets some of the objections already noted. This text reads as follows:

"When an aircraft without crew is leased to a person who is a national of a State other than the State of registration of that aircraft, the State of which such person is a national may also be competent to exercise jurisdiction over offences committed on board the aircraft."

The authors of this proposal gave certain explanations of some of the terms used in, and some of the omissions from, the principle thus outlined; and some of these explanations are summarized below. (See items (i) - (iv) below).

(i) Lease of the aircraft without crew

12. One view expressed was that the principle of the suggested solution should be extended to all leases of aircraft whether with or without crew and it was pointed out that, only in this manner, could interchange situations be satisfactorily covered by the Convention. However, it appeared that it was particularly in the case where an aircraft was leased without crew that the State of registration would find itself farthest removed from responsibility in relation to the event occurring on board the aircraft, and for this reason it was considered that the principle to be included in Article 2 should be restricted to the case of a lease of an aircraft without crew. The Subcommittee also considered that the inclusion of the case of the lease of an aircraft with crew would be outside its terms of reference.

(ii) French version of the English word "national" and the Spanish word "nacional"

13. The Subcommittee draws the attention of the Diplomatic Conference to the fact that, although the English word "national" and the Spanish word "nacional" in the above-mentioned proposal have been rendered in the French text by the word "ressortissant", the French text of the Rome draft Convention sometimes also uses the expression "a la nationalité".

(iii) "may also be competent to"

14. This part of the principle is stated in a permissive form, an original version of the principle having contained the words "shall also be competent to". The Subcommittee noted that, if the words "shall also be competent to" were used, the interpretation could be that every State ratifying the Convention

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would be obliged to take measures for establishing its jurisdiction for cases where its nationals took aircraft on lease and for recognizing similar jurisdiction of all other contracting States. However, the use of the words "may also be competent to" did not involve an obligation on the part of contracting States to establish jurisdiction of the State of the lessee, but only an undertaking on their part to recognize such jurisdiction if established by other States.⁽¹⁾

(iv) Certain omissions from the proposed principle

15. The proposed principle does not refer expressly to the lease of the "entire" aircraft since it was felt that normally where there was a question of lease without crew it was implied that the entire aircraft was being leased.

16. The text of the proposed principle intentionally avoids the use of the expression "operator" due to the serious difficulty of defining this term. Thus, the Subcommittee was reminded that during one stage of the preparation of the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, some fifty-two possible definitions of the term "operator" had been placed before the drafters of the Convention.

Relationship of proposed principle to paragraphs 2(a) and 2(b) of Article 2 of the draft Convention

17. The Subcommittee noted that, while the new paragraph proposed as Solution 3 was suggested as a separate paragraph in Article 2 and thus not subject to the provisions of paragraphs 2(a) and 2(b) of Article 2, nevertheless, if the proposed principle were adopted, the Diplomatic Conference would no doubt wish to consider independently the relationship of this paragraph to paragraphs 2(a) and 2(b) of Article 2.

Acceptance of proposed principle but only if Convention provides for priority of jurisdiction

18. One view in regard to the proposed principle was that it should be inserted in Article 2 of the draft Convention if the draft Convention provided for or established a system of priority of jurisdiction. However, the draft Convention prepared in Rome does not so provide.

(1) A suggestion favouring the permissive form of such jurisdiction was also placed before the Subcommittee, thus:

"Nothing in this article shall prevent the State of nationality of the lessee of the aircraft from exercising jurisdiction over an offence committed on board the aircraft."

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Special problem arising under Article 2 (3)

19. It was pointed out to the Subcommittee that if either Article 2 (4) were to be construed as not precluding the establishment of jurisdiction after the entry into force of the Convention or the proposed new principle were inserted in Article 2, there would still be a problem arising under Article 2 (3). The latter provision, in effect, referred to all Contracting States which were not the State of registration and it might be necessary to refer to all Contracting States which were neither the State of registration nor the State of the lessee. Article 2 (3) prevents States other than the State of registration from delaying or interfering with the aircraft in order to exercise their criminal jurisdiction except in the cases indicated in subparagraphs (a) to (e) of Article 2 (3). Since the State of registration is allowed to delay or interfere with its aircraft under the provisions of Article 2 (3), the State of the lessee might be put in the same position when it was exercising its jurisdiction over offences on board the aircraft.

Proposed amendments to Articles 6 (2) and 7 (2)

20. Regardless of whether Article 2 was or was not amended to make a specific mention of the jurisdiction of the State of the lessee, it was considered desirable to amend certain Articles dealing with the powers of the aircraft commander, namely, Articles 6 (2) and 7 (2) for the following reasons.

21. In relation to Article 6 (2), it was submitted that Article 1 (1) of the Convention spoke of the Convention as applying to "offences against penal law" without making reference to the law of any specific State, while in Article 6 (2), there was a reference to "a serious offence according to the penal laws of the State of registration of the aircraft." It seemed illogical to have no restriction in the one case and to have a restriction in the other. Moreover, in the case of an aircraft leased without crew, it would be difficult to expect a crew who would not generally have the nationality of the State of registration to know what was "a serious offence according to the penal laws of the State of registration of the aircraft." It was also suggested that since there were certain offences which were universally considered to be of a serious nature, this defect could be corrected by making no reference to the law of any particular State in Article 6 (2) and deleting the words "of the State of registration of the aircraft". A similar difficulty arose in connection with Article 7 (2) and a similar deletion was suggested. Such deletion, it was said, would give the aircraft commander greater flexibility in taking action under Articles 6 (2) and 7 (2).

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22. An opposing view was that the deletion of the words in question would be much too broad a solution for the problem before the Subcommittee which was concerned merely with the particular cases where an aircraft would be leased without crew by an operator who was a national of a State other than the State of registration. It was felt that to recommend such a deletion would be beyond the terms of reference of the Subcommittee.

Miscellaneous problems

Possible amendment of Article 10, paragraphs (1), (2) and (3)

23. Under paragraph (1) of Article 10 a Contracting State must allow the commander of an aircraft to disembark a suspected offender if the aircraft is registered in another Contracting State. Thus, if the airline of a Contracting State is operating an aircraft registered in the same State with its own crew, the obligation mentioned will not attach to that State. The situation would change, that is to say, the obligation would arise under the Convention, if the same operator had taken on lease an aircraft registered in another State and were operating it, the other conditions remaining the same as in the previous case, that is, without any change with respect to the operator, the commander of the aircraft, the suspected offender, the nature of the offence or the place of landing. The Subcommittee decided only to draw this matter to the attention of the Diplomatic Conference.

24. The Subcommittee points out that if Solution 3, the addition of a provision affirmatively providing for jurisdiction of the State of the lessee is adopted (or some variation thereof), the Diplomatic Conference may consider it desirable to add the State of the lessee to the list of those States to which notifications and reports should be respectively given under paragraphs (2) and (3) of Article 10.

Possibility of addition of the State of the lessee to Article 12, paragraph (1) of the Rome draft

25. A more difficult problem of the same type as that mentioned in the preceding paragraph arises in connection with Article 12(1). If the Diplomatic Conference should adopt some form of Solution 3, it would be necessary to consider whether to add in Article 12(1) the State of the lessee. However, since, under Article 12(1), the offences were already to be treated as being committed also in the territory of the State of registration, a reference to the territory of the State of the lessee (in the case of offences committed on aircraft under lease) might be considered to be an extension of the concept of extradition to which many States would object because of the undesirability of complicating the application of extradition treaties.

FINLAND: Comments⁽¹⁾

1. Article 1: The article as a whole seems a little ponderous. For the sake of clarity it might be an advantage, if paragraph 1 could be divided in such way that the new paragraph 1 would contain only the sub-paragraphs 1) and 2) (and would thus end with the words: ... "discipline on board".) The rest of the present paragraph 1 would be included, duly amended, as sub-paragraph 1 in the paragraph 2 and the present paragraph 2 would remain as sub-paragraph 2 in the new paragraph 2.
2. With regard to definitions, should not the general aim be an overall conformity of them? Thus the definition of Annex 6 regarding flight time could be used also here: ("from the moment an aircraft first moves under its own power for the purpose of taking off until the moment it comes to rest at the end of the flight.")
3. The reference to the provisions of Article 5 should be deleted consistently with the amendments to Article 5 (see comments on that Article below).
4. Paragraph 3 seems satisfactory. The sub-paragraph 2) should, however, be understood comprehensively and not as a list of examples.
5. Article 2: It might be advisable to consider whether the paragraphs 1 and 2 should be deleted.
6. Article 4: This article seems a little too "loose" in this connection. It might perhaps be better to move it over to the end of the convention.
7. Article 5: The supplement to be inserted as item d) to paragraph 1 proposed by Interpol (concerning seizure of an object which has a certain significance for the solution of the crime or which could otherwise facilitate the matter) should be accepted.
8. Since Article 1 already contains a definition of what is meant with "in flight", the first sentence of paragraph 3 should be left out. Otherwise there be two kinds of rules determining the time. Besides, such rules should be as clear as possible.
9. Article 6: A disembarking referred to in paragraph 1 may also take place within the territory of a non-contracting State in which case the approval of the competent authorities of that State is required. A provision to that effect should be added to this Article. (See Article 6 paragraph 3 a)).

(1) These comments were forwarded to the Secretariat by a letter dated April 26, 1963 from the Director of Civil Aviation of Finland.

10. In paragraph 2 the expression "in his opinion" seems less fortunate. In matters like this the subjective opinion should not be accentuated. In a question of personal freedom the legality should be the only basis of judgment. Therefore, a sufficient knowledge in law should be included in the training of air crews. From this viewpoint paragraph 3 c) also seems rather strange. Besides, in these cases the time for making a decision is usually very short.

11. Article 9: The provisions of this article are self-evident and therefore the article seems superfluous. If a convention is agreed upon, its provisions will be included in national legislation, if they do not already oblige as such the nationals of a Contracting State.

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VENEZUELA: Comments⁽¹⁾

1. The comments of my Government, in relation to the draft Convention, are, on this occasion, reduced to certain points which are considered to be of primary interest for Venezuela, taking into account the activity which it has been promoting in this matter.

2. Thus, without now making special reference to the definitions of the draft on offences, the scope, the rights of the commander and the obligations of the Contracting States, it is considered expedient to put forward comments concerning Articles 4 and 12 of the draft since everything concerning air safety legislation should be developed to the extent possible. My Government is convinced that, in any case, there should be legislation to establish clearly the concept of safety for the passenger and crew as well as for the aircraft and cargo, since this will contribute to a greater development of air transportation and therefore to the advancement of air navigation and airworthiness in general, with consequent greater benefits both for the States and the users of this means of transport.

3. As Article 4 of the draft imposes on the Contracting States the obligation to take all decisions or appropriate measures to restore control of the aircraft to its lawful commander, in cases of seizure or wrongful exercise of the said control, when this may have been accomplished through violence, it is considered that it would be very useful to add to the rule certain extensions which would consist in:

(1) These comments were received in a letter from the Minister of External Relations of Venezuela dated 30 April 1963.

- (a) broadening the element of intention in so far as concerns the offence and referring in generic form to the concept of "violence". Violence is an act of force contrary to the law; therefore, it would be preferable not to have exclusive recourse of this element as a basis for such offences;
- (b) to incorporate the concept that every act of seizure, interference or wrongful exercise of control of the aircraft is directly against air safety. On different occasions Venezuela has proposed that the acts to which we have been referring should, in any event, be considered as crimes or offences against persons or property and that not solely for the benefit of aviation itself, but also as a means of greater safety for the passenger, crew and cargo, and in order to guarantee at all times the attainment of the aims for which the International Civil Aviation Organization was created.

4. In this initiative, Venezuela has received the support of a great number of countries which witness with similar preoccupation any acts which directly or indirectly endanger air safety.

5. The acceptance of this principle understandably requires a variation in concepts in so far as concerns the delimitation of the scope of the law, a variation which is fully justifiable because of the benefit for the development of air transport and its specific safety.

UNITED STATES OF AMERICA: Comments⁽¹⁾

I. Extract from Letter Dated 8 May 1963

1. "The United States regards the conclusion of a multilateral treaty on this subject as both necessary and desirable. It thus strongly supports the convocation of the International Conference. Having taken part at every stage of the draft Convention's development, my Government considers that, subject to the attached comments on particular features, the draft text recommended by the Fourteenth Session of the Legal Committee can and should serve as the basis for the adoption by the Conference of a final text open to the signature of States. Accordingly, I accept, on behalf of my Government, the invitation extended by you, on behalf of the Council, to participate in the International Conference."

II. Comments of the United States of America

2. These comments of the United States on the draft Convention on Offences and Certain Other Acts Committed on Board Aircraft are directed only to those principles and features of the Rome text that the United States considers most in need of attention by the International Conference. The United States Delegation to the Conference may offer additional comments on these main principles and features as well as on other aspects of the draft Convention. Subject to the views stated herein, Member States may be apprised of the general views of the United States on many of the provisions of the Convention by referring to its comments on the Munich draft (LC/SC "Legal Status 1962" No. 3).⁽²⁾ It is assumed that all provisions of the draft Convention are open to drafting refinement.

3. Article 1, paragraph 1. In the past the United States has consistently maintained the view that the scope of the Convention should be limited to acts which jeopardize safety or good order and discipline on board the aircraft; and that it should not take cognizance of all offences against national penal laws. The purpose of the Convention, in the view of the United States (set forth previously in comments on the Munich draft), is to "provide adequate solutions for those special problems whose attempted resolution forms the raison d'être for the draft Convention. Thus, the draft Convention should be limited to making more definite and certain the application of criminal law to events occurring aboard aircraft which endanger the safety of the aircraft or persons or property on board and ensuring authority in the aircraft commander to deal appropriately with such acts. The U.S. considers that neither the types of acts and offences covered by the draft Convention nor the powers vested in the aircraft commander

(1) These comments were received in a letter from the Representative of the United States of America of the Council of ICAO, dated 8 May 1963.

(2) Secretariat Note: For ease of reference, the United States comments on the Munich draft are appended hereto.

should extend beyond those essential to achieve this desired objective." The United States holds that several features of the draft Convention, discussed below, exceed that which is necessary to achieve the purpose and objective of the Convention. These features should be re-examined by the Conference with a view to amending the text to bring it more into conformity with the major objective described above.

- (1)
4. Article 1, paragraph 1, subparagraph 2)c). The United States recommends that this provision be revised. It should not apply to an offence that has been discovered by, or brought to the attention or knowledge of, the police authorities of the State of registration (whether or not there has been an investigation) during an intermediate stop of the aircraft in the State of registration. Since the offence in question is necessarily one in which the State of registration is always the State most concerned, if that State has decided to take no action even though it has knowledge of the alleged offence, such decision should be determinative and not subject to re-examination by the State of subsequent landing. If, however, the incident is brought to the knowledge of the State of registration only after the last departure of the aircraft from that State, then the Convention should apply to the offence.
5. Article 1, paragraph 3. The United States strongly supports this provision which treats State and civil aircraft in precisely the same manner as the Chicago Convention. Any other formulation, far from resolving ambiguities in the Chicago Convention definition, would result in serious and undesirable complications to public international law applicable to aircraft and air navigation.
6. Article 2. In general, the United States is in accord with the Rome text which does not provide a system of priorities to resolve theoretically conceivable conflicts of jurisdiction. Conflicts in penal jurisdiction are common occurrences which States resolve effectively in an almost routine manner. There is no compelling reason why aviation should be treated differently from other activities and the existing conflict of penal jurisdiction solved by a complicated system of priorities merely because the crime occurred on board an aircraft. The purpose of the Convention is to resolve problems peculiar to international civil aviation, not to create a body of public international law independent of that which governs similar international rights, obligations, and conflicts of penal jurisdiction in other activities.
7. Article 2, paragraph 2. The United States urges that the Conference amend subparagraph a) to make clear that the application of a State's penal laws to aircraft of its nationality is an optional or voluntary right and not a mandatory obligation. An interpretation of this provision to the effect that a Contracting State is bound to make its own, or another State's, penal law applicable to acts that would be offences if committed in the national territory is unacceptable to the United States. Federated States in particular,

(1) Editorial Note: This heading should read: "Article 1, paragraph 1 c)".

and to a lesser extent all States, cannot be expected to make all their penal laws applicable to aircraft of their nationality. Indeed, States should be free to decide which substantive crimes are properly applicable to their aircraft. As indicated by our prior comment, States may, for example, only wish to make criminal those acts which endanger safety and good order and discipline on board. Similarly, States should be absolutely free to determine for themselves the jurisdictional reach of such laws. For example, a State may not wish to assert criminal jurisdiction over crimes committed in its registered aircraft when the aircraft is overflying another State, even though permitted by the Convention, preferring instead to rely on the laws of that other State. The questions of which penal laws should apply, and the specific jurisdictional limitations of such laws, are matters for each State to decide in accordance with its constitutional framework and its general social and legal philosophy.

Subparagraph b) is unnecessary because the principle is implicit in paragraph 1 of Article 2 which provides that the State of registration is competent to exercise jurisdiction over crimes committed on board the aircraft. Each Contracting State thereby recognizes the jurisdiction of the State of registry and must as a matter of law take what measures it considers necessary to implement this recognition. Subparagraph b) does not and should not do more. Particularly it should not form the basis for any obligation to grant priority to the jurisdiction of the State of registry. Thus, the U.S. considers paragraph 2.b) to be contained within Article 2, paragraph 1, and as such redundant.

8. Article 4. The United States considers that this Article is one of the most important provisions of the Convention. The purpose of the Article is identical with one of the main objectives of the Convention, namely, the enhancement of safety and good order and discipline on board the aircraft, and, as such, the Article is a most appropriate addition to the Convention.

While the United States strongly advocates the retention of the principle set forth in the Article, it should be, like all others, open to drafting refinement.

9. Articles 5, 6, 7, 8 and 9. These Articles are properly conceived in that the obligations of the aircraft commander are related solely to matters affecting safety and good order and discipline on board. Thus these Articles properly direct themselves to matters within the aircraft commander's knowledge and competence as the person responsible for, and in charge of, the safety of the aircraft. The commander is not, and should not be, a lawyer or a policeman. The aircraft commander cannot be assumed to have a complete knowledge of even his own country's penal law, not to mention the penal law of all the States over which his aircraft flies and which have jurisdiction under Article 1.

However, the United States considers that the jurisdictional scope of the Convention, in regard to the authority of the aircraft commander, as specified in Article 5, paragraph 3, should apply only to the period in which the aircraft doors are closed. Because of the availability of ground police between the time that doors are open and the moment when the last passenger has entered or departed from the aircraft, the present formulation is unnecessarily broad.

10. Article 10. In general, the United States supports the intent of this Article which seeks to balance the rights of the individual against the need for the maintenance of law and order on board the aircraft and the interest of the landing State.
11. Article 10, paragraph 2. The minutes of earlier meetings indicate that this provision is intended to protect the civil rights of the individual by insuring that the national law of the landing State relating to such matters is available to him. However, the United States is not convinced that the existing language of the Article, particularly the phrase "pursuant to its regulations and laws," is clear on this point. Therefore, the United States recommends that the Conference consider an appropriate amendment to make it unmistakably clear that the Convention grants to the person delivered all the protection of the civil liberties accorded by the law of the landing State.
12. Article 10, paragraph 6. This paragraph is unnecessary. There is no reason why air travel, in contradistinction to any other means of travel, should be made the subject of a provision concerning acceptance by States of unwanted aliens. National laws are, and should be, sufficient to cope with this problem and nothing in the Convention suggests, directly or by implication, modification of national laws in this regard. Indeed, paragraph 7 of Article 10 specifically provides that neither disembarkation nor delivery of the person shall constitute the acceptance of an alien under national laws relating to the admission or exclusion of aliens.
13. Article 12, paragraphs 1 and 2. The United States endorses this provision in principle. It may be desirable, however, to clarify, in paragraph 1, the exact nature of the manner in which the extradition treaties apply to registered aircraft of the State. Thus the paragraph should specify that the offences referred to are those to which the Convention applies, i.e., offences that each State shall decide for itself are under the Convention in accordance with the views previously set forth concerning Article 2, paragraph 2.

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COMMENTS OF THE UNITED STATES OF AMERICA⁽¹⁾

Detailed comments with respect to various problems arising in connection with the drafting of an appropriate convention on the above subject were presented by the United States Delegation at the Twelfth Session of the Legal Committee and are reflected in the minutes of that Session. In the interest of brevity, the United States will not repeat those comments at this time, but will instead restrict its observations to certain selected problems arising in connection with the present draft.

1. In the first place, as a matter of general comment, the United States wishes to reiterate its view that the scope of the draft Convention should be limited to that necessary in order to provide adequate solutions for those special problems whose attempted resolution forms the raison d'être for the draft Convention. Thus, the draft Convention should be limited to making more definite and certain the application of criminal law to events occurring aboard aircraft which endanger the safety of the aircraft or persons or property on board and ensuring authority in the aircraft commander to deal appropriately with such acts. The United States considers that neither the types of acts or offenses covered by the draft Convention nor the powers vested in the aircraft commander should extend beyond those essential to achieve this desired objective. As will be indicated below, it believes that the above principle has not always been fully respected in the present draft Convention.

2. Secondly, the United States, after careful study of the present draft, wishes to reiterate its suggestion as made at the Twelfth Session of the Legal Committee that Article 3 be redrafted with consequential changes in other articles so as to provide for a system of priorities of jurisdiction as between the State of registration of the aircraft on which the offense is committed and the State in whose airspace the offense is committed, these being the two States primarily concerned. The United States considers that such a system is highly desirable in order to afford an effective solution to the problems of conflict of criminal jurisdiction which may arise in international air transportation. In the absence of provision for effective solutions of these problems, the rationale of the Convention on this subject will be seriously prejudiced, and the Convention may well be open to criticism as creating more problems than it solves. For these reasons, the United States wishes most earnestly to urge reconsideration by the Legal Committee of a provision along the lines of those suggested by the United States at previous meetings.

3. The United States also wishes to point out the considerable difficulties inherent in Article 3(2) as presently drafted. In the opinion of the United States, the practical effect of the limitation placed by Article 3(2) on the criminal jurisdiction of a State in whose airspace the offense was committed appears, so far as affording a resolution of conflicts of jurisdiction is concerned, to be minimal. Despite the probable limited usefulness of Article 3(2) in the

(1) These comments were received in a letter from the Representative of the United States of America on the Council of ICAO, dated 12 May 1961.

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above respect, the provision represents in theory and in fact an important curtailment of the traditional jurisdiction of States over crimes committed in their airspace. It may be noted that under the provision as it now exists, if all the interested States desired the territorial State to exercise jurisdiction in a given instance, it would be deprived of the power of so doing under its terms. As such, this provision might give rise to serious problems as regards the general acceptability of the Convention, particularly in those States which require legislative approval to ratification. In this respect an even more complex problem of legislative implementation might arise in federal states such as the United States where such a limitation of sovereignty might involve difficult questions of federal-state relations. Adoption of a system of priorities in the preceding paragraph would to a great extent obviate these difficulties.

4. Thirdly, the United States wishes to reiterate its suggestion that the draft Convention specifically incorporate an article to the effect that (1) nothing in the Convention shall be deemed to create a right to request extradition of any person and (2) the term "jurisdiction" in any arrangements respecting extradition between States parties to the Convention shall, with respect to an offense to which the Convention applies, be taken to include jurisdiction as specified in Article 3(1) of the Convention. The United States attaches considerable importance to the incorporation of such an article. On the one hand, this article would make it quite clear that the Convention did not by implication purport of itself to create a right to extradition. On the other hand, such an article would serve in effect to amend any existing extradition treaties between parties to the Convention so as to facilitate the purposes of the Convention. The United States has traditionally interpreted the term "jurisdiction" in its existing extradition treaties to mean, generally, territorial jurisdiction. The proposed article would amplify the meaning of that term as used in extradition treaties between parties to the Convention so as to make such treaties applicable to offenses committed within jurisdictions recognized by the Convention, i.e., extraterritorial jurisdiction with respect to crimes committed aboard aircraft registered in a State other than the State of the airspace. In the absence of such an article, a tedious piecemeal amendment of each extradition treaty between the various parties would be necessary to reach the same result.

5. In addition to the above general comments, the United States wishes to make the following comments with respect to the individual articles of the Convention:

6. Article 1(a) makes those offenses committed aboard an aircraft in the airspace of a State other than the State of registration of the aircraft, subject to the Convention, and Article 3 gives jurisdiction to try the offense to the State of registration. If an aircraft is leased or chartered to a national of a State other than the State of registration, vesting jurisdiction in the State of registration raises problems particularly where the owner has surrendered operational control and if under these circumstances the State of registration

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were to attempt to exercise its jurisdiction, great difficulties might be encountered. The United States believes that the question of which State has or ought to have jurisdiction in this type of situation should be carefully examined by the Legal Committee and a specific provision to solve this difficult problem developed. In the absence of any other satisfactory solution to this problem, the United States believes that, in order to cover a situation where the aircraft is under the operational control of nationals other than nationals of the State of registration, a provision either providing for the temporary registration of the aircraft in the State of nationality of the operator and the vesting of criminal jurisdiction in the State of temporary registration rather than the State of permanent registration, or a provision divesting the State of permanent registration of the aircraft of criminal jurisdiction might well be considered.

7. The application of the Convention to the flights of aircraft operating internationally is adequately provided for in Paragraph 1 of Article 1 with the exception of one point which requires clarification and expansion. Paragraph 1(c) is intended to make the Convention apply to the special situation in which an offense occurs on an aircraft on a flight between two domestic points preliminary to that aircraft embarking on a flight to a foreign point when the offender remains aboard and the offense is not discovered until the aircraft lands at the foreign point. The purpose of this paragraph is to bring offenses committed under these circumstances under the Convention so that machinery may be available to assist in securing apprehension of the offender. It is not felt, however, that Paragraph 1(c) fully achieves its purpose because it is limited to flights in the airspace of the State of registration. It is believed that this special provision should not be so limited to flights in the territorial airspace but should also be applicable to undiscovered offenses on flights between two points in a country but occurring over the high seas, such as the Alaskan and Hawaiian operations of the United States carriers.

8. Article 2, when read with Article 3, appears to establish the scope of the Convention to include any offenses committed on board aircraft in international air navigation which are punishable under the penal laws of the State of registration of the aircraft, or the subjacent State. The scope of the offenses covered by the Convention is far in excess of the scope which would be necessary in order to protect air transportation from disruption or danger. The United States, therefore, does not concur in the broad scope of the Convention in its present form but recommends that the scope of the offenses subject to the Convention be those offenses which jeopardize the safety of the aircraft, the persons or property therein or offenses which jeopardize good order on board the aircraft. The United States concurs in the present effect of Articles 2 and 3 to limit the States which are competent to exercise jurisdiction within the purview of the Convention to that State in whose airspace the offense was committed or the State of registration of the aircraft. If there is any other applicable jurisdiction, it exists outside of the Convention and would not be affected by the Convention. The United States would support clarifying language where necessary to make this principle clear.

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9. Article 6, subsection 2, provides that the aircraft commander may deliver to competent authorities in any (non) Contracting State a person who he has reasonable grounds to believe has committed a serious offense. This statement is susceptible of the interpretation that the aircraft commander may hold a suspected offender in custody while the aircraft is on the ground in a non-contracting country in order to deliver the person to the next Contracting State in which the aircraft lands. The United States believes that the Legal Committee did not intend to grant this authority to the aircraft commander and recommends therefore that the Article expressly deny this power to the aircraft commander, except with the consent of the person restrained, thereby avoiding any difficulties of interpretation.

10. The draft Convention permits the aircraft commander to deliver a suspected offender to the competent authority of a Contracting State but does not specifically require the aircraft commander to cooperate with the appropriate authorities to assure that any requirements of local law are met. The United States feels that the aircraft commander's responsibility should be concomitant with his authority to deliver the suspected offender. Thus, he should cooperate with the competent authority if it so requests, provided that such request take due account of all applicable provisions of the Convention.

11. Articles 5 and 6 empower the aircraft commander to restrain and to disembark, respectively, any person who, among other things, "jeopardizes good order and discipline on board" the aircraft. Article 8(2), while it provides that the aircraft commander shall notify the competent authorities of any Contracting State in which the aircraft lands of the fact that an apparent offense or an act endangering the safety of the aircraft or persons or property therein has occurred and the suspected offender is on board the aircraft, does not provide for notification when the good order or discipline on board has been jeopardized. It is believed that the Legal Committee intended to include the term "or which jeopardizes the good order and discipline on board" in Article 8(2) but had inadvertently failed to do so. The term should be included in Article 8(2).

* Sic

JAPAN: Comments (1)Article 4, paragraph 1

1. "The State of which he is a national" should be added after the words "the State of registration of the aircraft" in the third line from the end.

Article 6, sub-paragraph 3(a)

2. According to the present draft, the aircraft commander must disembark a person upon whom he has imposed measures of restraint in a non-contracting State unless that State refuses such disembarkation, even when in the opinion of the aircraft commander the safety of aircraft and the good order on board can well be maintained through the measures which he has taken. Disembarkation of a person in a non-contracting State, however, may result in unreasonable delay of aircraft, particularly when that State initiates investigation on the act or offence involved, since the non-contracting State is not bound by the provisions of Article 11 which obliges the State to act to avoid unnecessary delay of the aircraft. Therefore, paragraph (a) should be modified so that the aircraft commander may, at his discretion, continue the measures of restraint until he disembarks the person in a Contracting State beyond a point in a non-contracting State at which the aircraft lands. The paragraph should be to read:

"(a) such point is in the territory of a non-contracting State;"

Article 10, paragraphs 1 and 2

3. Could paragraphs 1 and 2 of Article 10 be so understood that:

"Any Contracting State must also allow the aircraft commander to deliver any person to its competent authorities pursuant to Article 6, paragraph 2, but is not necessarily obliged to take such person into custody since the obligation for custody depends only upon the circumstances involved and the laws of that State. In cases where custody does not take place, the person who has been delivered will be subject to the same treatment as that accorded to the person disembarked."?

3.1 If that is the case, it will be necessary:

- (1) to add provisions to paragraph 1 specifying that a Contracting State shall allow the aircraft commander to deliver any person, and
- (2) to modify paragraph 6 in such a way as stated below.

(1) These comments were received in a letter from the Representative of Japan on the Council of ICAO, dated 9 May 1963.

Article 10, paragraph 6

4. It is not considered proper to make this paragraph applicable only to the person disembarked, since, in addition to the reasons mentioned above, arrest, prosecution and other criminal procedure may also be taken by the State where the aircraft lands against a person who has been disembarked. Paragraph 6 should, therefore, be modified to read:

"Without prejudice to the preceding paragraphs, the State in whose territory a person has been disembarked pursuant to Article 6, paragraph 1, or delivered pursuant to paragraph 2 thereof, may, if that person is not a national or permanent resident of that State, deport that person to the territory of the State of which he is a national or permanent resident, or, if there is no such State, to the territory of the State in which he began his journey by air except where such person was prosecuted by the competent authorities of that State (or except where such person was released after he had served a long term sentence in that State.)"

4.1 Besides, in order to make it clear that the State to which the person is deported is obliged to receive him, it is suggested that the following new paragraph be added:

"Any Contracting State to which the person is deported pursuant to Article 10, paragraph 6, shall be bound to accept him."

ITALY: Comments⁽¹⁾

1. The Italian Administration considers that the draft convention, as drawn up by the Legal Committee during its Fourteenth Session (Rome, August 1962), constitutes a good basis for discussion by the Diplomatic Conference which is going to meet at Tokyo in the month of August next.
2. Pursuant to the provisions of Article 2, paragraph 1, it appears clearly that every State can exercise jurisdiction over offences committed on board aircraft entered on its register; but doubts have been expressed to the effect that the practical application of this principle would appear to be difficult in the case of an aircraft leased without crew to a person not having the nationality of that State.
3. In the opinion of the Italian Administration, this doubt can be removed by the provision of paragraph 4 of Article 2 which does not supersede any basis for criminal jurisdiction which a State might have incorporated into its national laws. To be true, there is a discussion as to whether this provision applies only to bases for jurisdiction which already exist in national laws and not also to those which might be later incorporated into such laws. The more extensive interpretation would appear to be acceptable; if there is agreement on this point, a drafting amendment to the paragraph in question could overcome any difficulty.
4. If, on the other hand, it is considered that the provisions of paragraph 4 of Article 2 are inadequate, several solutions would be contemplated. In particular, there could be stated the principle of concurrent jurisdiction between the State of registration and the State of the lessee (but this principle does not appear to have been accepted by the Legal Committee during its preceding work); or the aircraft could be considered as being registered in the State of the lessee during the whole of the period of the lease relationship (but this legal fiction would seem to be contrary to the principle laid down by Article 18 of the Chicago Convention).
5. These are essential points which the draft opens for discussion and which the Tokyo Conference should not fail to study carefully.

(1) These comments were received in a letter dated 8 May 1963 addressed to the Secretary General of the International Civil Aviation Organization by the Director General of Civil Aviation, Italy.

EL SALVADOR: Comments⁽¹⁾Article 1

1. After having studied this draft, this Directorate General is of the opinion that the technical fact of aviation, which fact is daily manifested in a clearly wonderful manner, has given rise to the autonomy of the newest of legal branches, which through the influence of French jurists was first known by the name of "Air Law", but is at the present time better known under the name of "Aeronautical Law".
2. Given the necessity of a specific and adequate treatment of the distinct principles which make up that new law, there are two fundamental questions falling within the scope of penal science which cannot escape from that autonomous plan: the existence of offences arising from the technical fact of aviation with their own peculiar characteristics which are distinct from common offences and the question of jurisdiction in relation to offences committed on board aircraft.
3. Legal doctrine acknowledges the existence of specific aeronautical offences and understands as such those offences whose very essence is based on the fact of aviation, so that if aviation did not exist it would not be possible to create them. These offences protect legal interests of a specific nature: the safety of flight, the safety of third parties on the surface in relation to air navigation, the safety of the State also affected by aviation, etc.
4. Aeronautical offences in some countries appear as such in a law called the Aeronautical Code, as for example in Argentina, and include punishable infractions such as those committed in air traffic, attempts against the safety of airways and air traffic, the interruption of airways, the use of false signals, aerial piracy, the offence of overflight and other analogous offences.
5. We do not have, in El Salvador, any special legislation on aeronautical offences, since the Civil Aeronautics Law in force does not include any chapter for the purpose of covering such offences.
6. The draft presented by the ICAO Legal Committee properly refers to the establishment of procedural rules applicable in the case of offences committed on board aircraft, without making any distinction between offences which are properly aeronautical and common offences. In fact, the first article of the draft says that the Convention shall apply to offences against penal laws, a general and broad expression which includes all conduct which violates legal order including infractions which harm legal values arising out of the fact of aviation, which fall outside the general scope of common offences and which, in our country, as in many American countries, are not covered by any law.
7. It is desirable that the Convention which it is sought to sign should not merely refer to the procedural aspect of offences committed on board aircraft, but should also embrace the substantive aspect of the question which is the most necessary one since, in regard to the first aspect, there are legal provisions which deal with the question, such as international treaties and conventions in force.

(1) These comments were forwarded to the Secretariat in a letter from the Director General of Civil Aeronautics, El Salvador, dated 9 May 1963.

8. Within the preceding criterion, the first article of the Convention which it is proposed to sign could be drafted as follows:

"This Convention shall apply in respect of:

- (1) Aeronautical offences
- (2) Common offences committed on board aircraft
- (3) Acts of imprudence which, whether or not they constitute penal offences, may or do jeopardize the safety of the aircraft or persons or property therein or which jeopardize good order and discipline on board when the penal offences or acts of imprudence are committed or attempted by a person on board any aircraft registered in the Contracting State."

9. It would also be desirable for the second article of the draft convention to deal with the establishment of offences which are specifically aeronautical in order to distinguish them from other offences already existing in other positive laws, thus confirming the full autonomy of the subject-matter which the aeronautical offences include without that meaning that there is a conflict of autonomy between air law and penal law, which actually does not exist, since the formal structure of the offences of the new law are also based on the legal theory of the offence.

10. The second article to which I am referring tries to determine the procedural legal rules applicable to the case of offences committed on board aircraft; but, apart from the fact that it is not well drafted, it also gives rise to confusion.

11. Agreements of International Congresses and Associations have established the rule: that aircraft are subject to the jurisdiction of the courts of the State to which they belong and that is the basic criterion of the draft, since the second article provides that the State of registration is competent to exercise jurisdiction over offences committed on board aircraft.

12. In this regard, I may be permitted to advise that our Civil Aeronautics Law enacts that there shall be subject to Salvadorian law "Acts performed and deeds occurring on board foreign aircraft which fly over Salvadorian territory or which are stationary within it, when such acts or deeds affect the security or public order of El Salvador or when they produce or seek to produce effects in Salvadorian territory".

13. In the International Congress of Jurists held at Lima, Peru, in 1951, when the subject "Penal Jurisdiction in Air Navigation" was taken up, it was agreed "that when the procedural legal rules applicable in the case of aeronautical offences were established, it would be necessary to differentiate between the inquiry phase and the decision phase in judging such offences". This is a most important point of which no account at all is taken in the draft convention.

14. In such a delicate matter as the establishment of procedural legal rules applicable in the case of offences committed on board aircraft, it would be appropriate to establish as clearly as possible the various situations that could arise and, therefore, El Salvador proposes a more careful study of the subject and submits the following draft:

"Art.

Aeronautical offences and other penal infractions committed on board an aircraft over the high seas or over a territory not subject to the sovereignty of any State, shall be subject to the legislation and jurisdiction of the country of nationality of the aircraft, but the penal procedural laws of the State in whose territory the first landing is made shall apply for the purpose of the steps necessary for the inquiry and for the provisional detention of the suspected offender.

Art.

Aeronautical offences and other penal infractions committed on board aircraft above the territory of a foreign State, shall, when such acts are of a nature to affect security or public order or to prejudice persons or property situated in the underlying foreign territory, be subject to the law and jurisdiction of such State, without prejudice to the application of the penal procedural law applicable in the place of the first landing, for the same purposes as those indicated in the preceding article.

When the aeronautical offences and other penal infractions committed in the same situation to which the preceding paragraph refers are not such as to affect the safety or public order of the subjacent State or to prejudice persons or property situated in that territory, they shall be subject to the law and jurisdiction of the country of nationality of the aircraft, provided that if the aircraft lands in the territory of the subjacent State, the penal procedural legislation of that State shall apply for the inquiry phase of the proceedings, and on the conclusion of such proceedings the case shall be reported, along with those detained, to the State of registration for judgment in the final phase of the proceedings."

POLISH PEOPLE'S REPUBLIC: Comments⁽¹⁾

Article 1, paragraph 1

1. It is proposed to limit the scope of the Convention to acts which, whether or not they are an offence, jeopardize the safety of the aircraft or persons or property therein or which jeopardize good order and discipline on board.

Article 2

2. In the case of a barehull charter it would be necessary to ensure that the State of nationality of the charterer will have the possibility of establishing its jurisdiction equally with the jurisdiction of the State of registration of the aircraft.

Article 2, paragraph 3 (e)

3. It is recommended that this provision be so drafted as to state that obligations arising out of bilateral or regional agreements are not involved.

Article 3

4. It is proposed that this article be deleted in order to leave the States the possibility of prosecuting the offences contemplated by this article if their national laws so permit. The deletion of this provision will facilitate adherence to this Convention by States where this principle is expressed in a different manner.

Article 5, paragraph 2

5. It is proposed that the words "or passenger" be deleted from the last sentence in order to eliminate the possibility that a passenger may take preventive measures without the authority of the aircraft commander.

(1) These comments were forwarded to the Secretariat by a letter from the Director of the Department of Civil Aviation, Polish People's Republic, dated 14 May 1963.

SWITZERLAND: Comments⁽¹⁾Article 3, paragraph 3

1. In the preparation of this text there has been a departure from the principle of exact deduction, because a previous punishment which is not of the same character as the subsequent punishment cannot be deducted, but only taken into consideration in one way or another. However, it appears to be expedient to retain the principle of deduction at least in so far as concerns punishments involving deprivation of freedom.

Proposal: ... by the competent authorities of another contracting State, those authorities shall ~~take-into-account-the-punishment-or-part-of-the-punishment-already-carried-out-in-the-first-State:~~

- (a) deduct the punishment or part of punishment already carried out in the first State, when both punishments involve deprivation of freedom,
- (b) in all other cases, take into account the punishment or part of punishment already carried out in the first State.

Article 4

2. The proposals concerning this article are related to those with respect to Article 10; in the latter article, it should be specified that the obligation of contracting States to make a preliminary investigation, with a notification to other contracting States, extends to the cases contemplated in Article.4.

(1) These comments were forwarded to the Secretariat by a letter dated 15 May 1963 from the Director of the Federal Air Office.

Paragraph 1: First sentence of old paragraph 1.

Following the commission by violence ... of the aircraft.

The measures which the contracting States must take under this paragraph are conceivable even independently of the landing of the aircraft in their territory, and, in any event, the State of registration has an interest in being informed of all such measures. However, the proposal below, naturally relates also to measures taken by the State of landing.

Paragraph 2: Each Contracting State shall inform the State of registration of the aircraft of the measures which it has taken in pursuance of the preceding paragraph.

Paragraph 3: The aim of the proposal below is to clarify the contents of the second sentence of paragraph 1, which could give rise to misunderstanding in so far as it refers to the laws of the State of landing. Thus, the Convention establishes a right of autonomous custody.

Proposal: Each Contracting State in which the aircraft lands after an act or threat contemplated by paragraph 1 of this article shall take custody, ~~in accordance with its own law~~, subject to the contrary provisions of its own laws, of the person committing such act or threat.

Paragraph 4: The same as the present paragraph 2, subject to adaptation of the drafting to the proposed changes.

... under conditions contemplated in paragraph 1 ...

(Note of Secretariat: Suggested change affects only French text.)

Article 4, paragraphs 1 and 2; Article 6, paragraphs 1 and 2:

3. It would be desirable to emphasize the fact that the measures to be taken should have a real and serious basis. The proposal given below will also permit a better adaptation of the English text to the French and Spanish versions.

Proposal: ... has serious grounds to believe ...

Article 5, paragraph 1:

4. According to the Rome draft, reasonable and necessary measures could be taken only in regard to the author of the act. This would be an inappropriate and dangerous limitation.

Proposal: ... may impose ⁽¹⁾ reasonable measures, including restraint upon such person, which are necessary ...

(1) During the Conference the Swiss Delegation said that the word "impose" should be replaced by the word "take".

Article 5, paragraph 3:

5. This provision refers both to Article 5 and Article 6; it has an immediate relationship to the delimitation of the scope in Article 1. Therefore, it appears appropriate to add to it the second paragraph of Article 1 and to make the drafting changes required by the transfer of this provision.

Article 5, paragraph 4:

6. In view of its importance, it is our opinion that this definition should not be found in a paragraph of a special article, but should be given a separate place.

Proposal: To put this provision by itself and, without changing its terms, to place it after Article 10.

Article 6, paragraph 1:

7. It should be stated that the preliminary conditions established by Article 5 for the application of Article 6 are alternative and not cumulative.

Article 6, paragraph 2:

8. It is not seen why the delivery of a person who has committed a serious act on board would be limited to cases where the aircraft commander has imposed measures of restraint upon that person. Besides, there are conceivably cases where, due to lack of room, no measures could be taken, although such measures might have been appropriate under Article 5, paragraph 1(c).

Proposal: ... he may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person upon whom he has imposed measures of restraint pursuant to Article 5.

Article 6, paragraph 3:

9. The present draft, which refers to the point of landing, renders more difficult the protection of the author of the act, in that it appears to cover measures of restraint during the whole period of the stop of the aircraft up to and including the technical preparations for its departure. It should be stated more clearly that the measures of restraint must, in principle, be suppressed after the first landing following the act charged.

10. Besides, it is advisable to provide that the declaration of assent of the person carried be in written form under subparagraph (c). In this way, the protection of this person is improved and, at the same time, the commander is given the advantage of a clarification of the means of proof.

Proposal: ... shall not be continued ~~beyond-any-point-at-which-the aircraft-lands~~ after any landing, as soon as disembarkation has terminated, unless:

- (a) the point of landing is in ...
- (b) ...
- (c) such person agrees in writing to onward ...

Article 9:

11. By a better adaptation of the French text to the English text, it could be said that the protection offered will fail if the measures taken exceed the rights given by the Convention.

Proposal: ... prises ~~en-application-des~~ conformément aux dispositions de la présente Convention ...

(Note of the Secretariat: This involves no change in the English text which would continue to read "taken in accordance with the provisions of this Convention".)

Article 10:

12. In this article it should be clearly said that the States are obliged to establish, if necessary, an autonomous basis for taking custody and for making a preliminary investigation.

13. In addition, it is proposed to replace the present form of paragraph 6 by paragraph 4 of the Montreal draft⁽¹⁾ which would, in every respect, better meet the requirements of the situation. In particular, the system of priority postulated by the present draft appears to be unacceptable.

⁽¹⁾ At the request of the State in whose territory the person is disembarked or delivered, the State of which he is a national, the State of which he is a permanent resident and the State in which he began his journey shall be obliged to admit him into its territory, unless he is a national of, or permanent resident in, the requesting State.

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14. It appears to us to be appropriate to amend the article as a whole and henceforth to divide it in the following way:

Article 10: present paragraphs 1 and 5;

Article 10 bis: present paragraphs 2, 3 and 4, extending partially its application to the cases of Article 4;

Article 10 ter: present paragraphs 6 and 7.

15. The Swiss Delegation will present to the Conference a revised version along these lines and it will propose, at the beginning of the Conference, that a subcommittee be established to consider Article 10.

Article 12, paragraph 1:

16. Limited as it is to extradition treaties, this provision seems to be narrow; it would undoubtedly be appropriate to refer to cases of extradition in general.

Proposal: ... shall be treated, for the purpose of ~~of-extradition~~ treaties of extradition ...

GUATEMALA: Comments⁽¹⁾

(Rule 9 of Provisional Rules of Procedure)

Provisional Rules of Procedure

It is suggested that Article 9 (Powers of the presiding Officer) be drafted as follows:

"The presiding Officer of the Conference, a Commission, a Committee or a Working Group shall declare the opening and closing of each meeting, direct the discussion, ensure observance of these rules, accord the right to speak, put questions and announce decisions. He shall rule on points of order and subject to these rules, shall have complete control of the proceedings of the body concerned and over the maintenance of its meetings. He shall prepare the written draft of the decisions and announce such decisions after approval of the final text of the said draft."

(1) These comments were forwarded to the Secretariat by a letter from the Director of International Organizations, Ministry of External Relations, Guatemala, dated 16 May 1963.

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GUATEMALA: Comments⁽¹⁾

(Article B of draft Final Clauses)

Add to Article B, paragraph 2: "with the State or organization determined by the Conference" so that the said paragraph will read as follows:

"Article B. 2: The instruments of ratification shall be deposited with the State or organization determined by the Conference."

(1) These comments were forwarded to the Secretariat by a letter from the Director of International Organizations, Ministry of External Relations, Guatemala, dated 16 May 1963.

AUSTRIA: Comments⁽¹⁾Article 3

1. The provisions of para. 2 should be extended. Punishment carried out in another State that is inconsistent with the "ordre public" cannot be taken into account. Further trial should also be permitted when the judgment rendered by the other Contracting State consists of a breach of important interests of the otherwise competent Contracting State or is incompatible with the "ordre public" of that State.

Article 5

2. The powers conferred by Art. 5 on the aircraft commander should be applied also if it becomes known afterwards that a person on board the aircraft has committed a serious offence and is prosecuted by the authorities. Thus the aircraft commander would be enabled to prevent possible attempts of the offender to escape by violence (e.g. by acts mentioned in Art. 4, para 1) from being taken into custody. The aircraft commander should have also the power to secure possible evidence for offences committed on board the aircraft in order to transmit it to the competent authorities in accordance with Art. 7, para. 2. This Article should be amended to the effect that evidence being in the possession of the aircraft commander pursuant to Art. 5 has to be transmitted to the authorities of the State to whom the offender is delivered.

Article 10

3. Those States, the laws of which do not provide for a period as mentioned in Art. 10, para. 4, would be forced to fix such periods by special legal action. With a view to avoiding this, it is considered sufficient to allow the State, in which the offender is arrested, to fix a period for the demand for extradition when notifying the other States concerned pursuant to para. 2. As regards the duration of arrest according to Art. 10, para. 4a), reference should be made to the national laws of the State in which the offender is arrested, because it has to be rules according to these laws whether the offender should be arrested at all. Art. 10, para. 5, does not take into account that the disembarked person, if not arrested or released, must possibly hold to the order of the courts during investigation. Immediate continuation of the journey pursuant to Art. 10, para. 5, cannot be permitted in that case. This Article should, therefore, be amended accordingly.

Article 12

4. In Article 12, para. 1, (English text) the words "for the purpose of extradition treaties" should be replaced by "for the purpose of extradition".

(1) These comments were forwarded to the Secretariat by the Director of Civil Aviation, Austria, in a letter dated 15 May 1963.

INTERNATIONAL CRIMINAL POLICE ORGANIZATION: Comments⁽¹⁾

1. I consider that I should acquaint you with the aspects of the draft Convention prepared at Rome which our Organization is particularly interested in maintaining and at the same time request you to be kind enough to communicate this information to the Tokyo Conference if the Rules of Procedure so permit.

2. The ICPO-INTERPOL is particularly interested in having the Convention apply, on the one hand, in respect of offences against penal laws, and, on the other, in the case of acts which, whether or not they are an offence, may or do jeopardize the safety ... etc. ... Therefore, our Organization is most desirous of having the text of Article 1, paragraph 1 as drafted at Rome in 1962 maintained as a whole and in the same form. In the view of the ICPO, it is of the highest interest that the Convention should enable the aircraft commander not to remain unconcerned in the face of a serious offence to the penal laws of the State of registration committed on board during flight even if this offence does not jeopardize or risk jeopardizing safety. Without making a lawyer or a policeman out of the aircraft commander, it can be admitted that, in a general interest, his capacity as sole head during flight designates him as being the natural person to exercise, in the case of a serious offence of any nature, the powers conferred upon him, especially by Article 6, paragraph 2 with regard to the author and to take in such case the necessary measures of conservation for which provision is made in Article 7, paragraph 2. (These references to Articles obviously apply to the text drawn up at Rome in 1962).

3. If this application of the Convention to serious offences of any nature committed on board were not sustained, there would, in our opinion, be two very regrettable consequences:

- (1) the space constituted by the aircraft during flight would, due to this fact, become one of the rare places where a serious offence could be committed without any risk of intervention on the part of any authority whatsoever, provided that such offence did not jeopardize safety.
- (2) the scope of the extradition clause found in Article 12 (Rome text - 1962) would be extremely reduced, since offences which could give rise to extradition would be limited to those which jeopardized safety and this would be a check to the international repression of crime.

4. I shall say, to sum up these few comments, that if the Tokyo Conference wishes to adopt a Convention which will have a truly international legal scope and not to limit itself to protecting and defending the objectives of the safety of air navigation, it seems that there would be an obvious interest in adopting the point of view which I have just exposed and which our Organization had the honour to have adopted by the Legal Committee which met in Rome in 1962.

(1) These comments were received in a letter from the Secretary General of the ICPO, dated 13 June 1963.

FRANCE: Comments⁽¹⁾

1. By letter dated 23 January 1963, the Secretary General of the International Civil Aviation Organization forwarded to the French Government a draft Convention on Offences and Certain Other Acts Committed on Board Aircraft, the text of which is to be studied during the Conference convened at Tokyo for 20 August next.

2. The different ministerial departments concerned have examined this document with the greatest care, and detailed instructions will be prepared for the French Delegation to the Conference.

3. Nevertheless the French authorities consider that they should communicate immediately certain general comments to ICAO:

(1) It would seem that the Convention, which deals with two absolutely distinct problems (penal questions and powers of the aircraft commander), should be divided into two clearly separated parts corresponding to these two problems.

(2) In so far as penal clauses are concerned, the French authorities agree to recognize a principal jurisdiction of the State of registration; but it appears to them to be regrettable not to provide, in the Convention itself, for certain priorities among the States which could be called upon to prosecute the offenders.

(3) With regard to the part concerning the powers of the aircraft commander, the French authorities understand the necessity of strengthening such powers, which is one of the objects of the Convention. But it would appear to them to be equally useful to provide, either in an annex to this Convention or in an addendum to Annex I to the Chicago Convention, a model form allowing the aircraft commander to draw up, in the case of offences, a detailed report.

(4) The present draft of Article 9 gives rise to some reservations and the principle which it lays down should be limited to certain cases.

(5) Lastly, the definition of aircraft in flight given in paragraph 2 of Article 1 appears to contradict the provisions of Article 5, paragraph 3 (first sentence).

(1) These comments were forwarded to the Secretariat in a letter from the Office of the Representative of France on the ICAO Council dated 22 July 1963.

INTERNATIONAL AIR TRANSPORT ASSOCIATION: Comments⁽¹⁾

1. Article 1, Paragraph 1: It is recommended that the words "whether statutory or otherwise" should be added to the end of sub-paragraph 1 of this paragraph so that it should read as follows:

"1) Offences against penal laws whether statutory or otherwise." The addition purports to make it clear that not only offences against statutes but also common law offences are included in the Convention.

2. Additionally, it is recommended to clarify the expression "penal laws". The Conference might wish to indicate which laws need be looked at to determine whether an offence was committed or not. Is it the penal law of the jurisdiction where the prosecution takes place, or is it the penal law of the State where the aircraft was registered, or is it some other penal law? To leave this matter entirely to the Courts may result in ambiguity.

3. Article 1, Paragraph 2: Whilst there is a reference to Article 5 in this paragraph, it is not altogether certain that this reference would be effective to extend the definition of "in flight" so as to cover the additional periods of time during which the aircraft commander is empowered, under Article 5(3), to restrain acts tending to jeopardise the safety of the aircraft, etc. Technically, there is a limitation regarding the scope of the Convention in the definition "in flight", and it is feared that in certain jurisdictions, notwithstanding the expression "and subject to the provisions of Article 5", the aircraft commander, acting under Article 5, might find himself outside the Convention. It is recommended that this possibility, slight as it might be, should be avoided, and the period of general application of the Convention should be made to coincide with the period in which the aircraft commander is authorised to act.

4. Article 2, Paragraph 4: It is recommended that the words "subject to paragraph 3" should be inserted at the commencement of this paragraph so as to make sure that, in exercising criminal jurisdiction under its national laws, Contracting States would nevertheless be bound by the injunction against delaying or interfering with an aircraft, as expressed in paragraph 3.

5. It is also recommended that the expression "basis for criminal jurisdiction" should be clarified. Presumably this expression is meant to cover any criminal jurisdiction whether conferred by statute, code or common law. If so, the matter could be clarified and the appropriate drafting changes made in this paragraph.

(1) These comments were forwarded to the Secretariat in a letter from the Director General of the International Air Transport Association, dated 18 July 1963.

6. As a further point of clarification, it would be useful to state in this paragraph whether criminal jurisdiction to which reference is made in it, is criminal jurisdiction that a State already had at the time of the ratification or signing of the new Convention, or criminal jurisdiction that a State might acquire at a later date. Presumably, the latter construction was intended but as some doubts were expressed in this matter, clarification would be advisable.

7. In connection with this article, reference is also made to the Report of the ICAO sub-committee, dealing with the problem raised by the sub-committee that under the draft Convention, as presently written, it may not be possible for the State of registry of the aircraft to exercise its jurisdiction effectively when the aircraft is leased without crew to a person who is not a national of such State. The solution that appeals to IATA as being the most acceptable, is as follows:

"When an aircraft without crew is leased to a person who is a national of a State other than the State of registration of that aircraft, the State of which such person is a national may also exercise jurisdiction over offences committed on board the aircraft."

Substantially the same principle has previously been supported by IATA and its adoption would impart to the Convention a measure of elasticity which would make it a more effective instrument to cope with situations arising from the lease or charter of aircraft between operators of different nationalities.

8. Should this principle not be adopted by the Conference, it is recommended that paragraph 4 of Article 2 should be amended by adding to it the following language:

"Subject to paragraph 2, nothing in this Article shall prevent the State of nationality of the lessee of an aircraft from exercising jurisdiction over an offence committed on board the aircraft."

This language merely expresses a principle in paragraph 4 of Article 2 which was already suggested as being a possible construction of this paragraph.

9. Article 5, Paragraph 1: It is recommended that the last line should read as follows: "such measures, including restraint, as are reasonably necessary" instead of the present language which reads "reasonable measures including restraint which are necessary." The present language requires compliance with two standards; first that the measure should be reasonable and second, that it should be necessary. The suggested language would require one standard, the measure which in the circumstances is reasonably necessary. The expression "reasonably necessary" is an objective standard which adequately controls the "measure" and therefore would sufficiently guard against any abuse of the powers by the pilot-in-command.

10. Article 6, Paragraph 1: It is recommended that the expression "in so far as it is necessary" in the first sentence should be deleted as it appears unnecessary and might only create ambiguity.

11. Article 6, Paragraph 2: It is recommended that the expression "whether statutory or otherwise" should be inserted after the expression "according to the penal laws" for the same reasons as given for the corresponding amendment in Article 1, paragraph 1.

12. It is also recommended that the reference to the laws of the State of registration of the aircraft should be deleted. This reference creates great hardship for pilots-in-command of any aircraft and places pilots-in-command of leased aircraft in a completely untenable position. Neither the aircraft commander, nor his crew may be familiar with the laws of the State of registry of the aircraft. It is, therefore, quite unreasonable to ask them to conform with the requirements of these laws to determine their functions under the new Convention.

13. Article 7, Paragraph 2: It is recommended that the last part of paragraph 2, which reads as follows, should be deleted:

"which, in accordance with the law of the State of registration of the aircraft, are lawfully in his possession."

This language would impose upon the aircraft commander the burden of deciding upon the legality of any evidence and information in his possession, something which he might find impossible to do without legal assistance. In the case of chartered aircraft, as mentioned above, the difficulty would be further increased. It is desirable, therefore, to relieve the aircraft commander of the duty of deciding technical legal questions of this nature.

14. As a drafting matter, it is recommended that the expression "Pilot-in-Command" should be used instead of the expression "Aircraft Commander", throughout the Convention. The Pilot-in-Command is referred to in Annexes 2 and 6 of the Chicago Convention, where his authority is defined. It would be helpful if the new Convention were to refer to the same person in determining the powers of the aircraft commander in case of crimes committed on board aircraft.

SENEGAL: Comments⁽¹⁾

1. The Government of Senegal considers that the conclusion of an international convention on this subject is a matter of great interest and that the draft prepared by the Legal Committee during its Fourteenth Session is a good basis for the work of the International Conference which is to meet at Tokyo in August-September 1963 and at which it has been decided that the Government would be represented.
 - 1.1 The comments which follow will relate only to a particular aspect of the draft convention which is of special interest to Senegal.
 2. The draft convention naturally attaches great importance to the nationality of the aircraft on board which there has been committed an offence or an act which, whether or not it is an offence, may jeopardize the safety of that aircraft or persons or property carried. Without giving a priority of jurisdiction to the State of registration, the draft as a whole recognizes that normally this State wishes to take jurisdiction over acts of this nature committed on board aircraft of which an entry on its register gives its nationality.
 - 2.1 These provisions of the draft convention, having resulted from detailed studies which preceded and accompanied the drafting of the convention do not, in themselves, require comment and it is difficult to quarrel with the important recognition thus given, following the methods and shades of meaning of the Rome text, to the relations of an aircraft and its crew with the State of nationality of the aircraft.
 3. The importance and the frequency of the references made in the draft convention to the "State of registration of the aircraft" and to the jurisdiction of the State of which the aircraft has the nationality could, however, give rise to the thought, confirmed by the reading of certain statements found in the Minutes of the Fourteenth Session of the Legal Committee, that the only registration which has been considered to be possible has been a national registration of aircraft on the special register of a State pursuant to the practice at present followed.

(1) These comments were forwarded to the Secretariat in a letter from the Ministère des Travaux Publics, des Transports et des Mines, Republic of Senegal, dated 5 August 1963.

- 3.1 But a provision of Article 77 of the Chicago Convention which authorizes the establishment by one or more States of international operating agencies gives to the ICAO Council the task of determining in what manner the provisions of that Convention relating to nationality of aircraft shall apply to aircraft operated by such international agencies.
- 3.2 Senegal considers, like other States which have accomplished or which are contemplating the establishment of such a joint international operating agency, that this provision of Article 77 of the Chicago Convention should enable a specific and different solution from that of national registration to be found for problems raised by the nationality and registration of aircraft operated by these agencies.
- 3.3 Senegal which, along with ten other African States, has established a joint air transport undertaking by international treaty signed at Yaounde, on 28 March 1961, thus considers that a decision taken by the ICAO Council in pursuance of the said Article 77 and which would permit a common register for the States signatories to this treaty for the aircraft operated by their common undertaking, would be a completion of their intention to cooperate in the aeronautical field and a condition of the perfect application of certain provisions taken in order to develop and favour this cooperation.
4. The problems of nationality and registration of aircraft operated by international agencies are in the work programme of the Legal Committee.
 - 4.1 Undoubtedly at the present stage of the study of these problems it would not be realistic to contemplate including in the Convention to be considered at Tokyo provisions constituting an appropriate solution for the case of a specific system of registration, other than national registration, in the case envisaged in Article 77 of the Chicago Convention.
 - 4.2 Substantive provisions on this subject should follow and not precede the decision which the ICAO Council will take at the end of the work of the Legal Committee concerning these problems of nationality and registration of aircraft operated by international agencies which the Legal Commission of the Fourteenth Assembly placed in Part A of the Work Programme of the Committee.
 - 4.3 Nor, obviously, could there be any question of delaying the work on the Convention on Offences and Other Acts on board Aircraft while awaiting the work of the Committee and the decision of the Council concerning Article 77 of the Chicago Convention.

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5. But Senegal considers that the preparatory work for the Tokyo Conference was not, even indirectly, intended to reject, and should not have the effect of rejecting, the possibility of a specific registration other than national, of aircraft operated by international agencies, if this possibility exists under Article 77 of the Chicago Convention, especially since studies of this question are to take place in the near future.
- 5.1 The International Convention which, after the work at Tokyo, is to be opened for signature and ratification of States should not, therefore, even indirectly, result in the creation of an obstacle or major difficulties to the solution of the problems of the registration and nationality of aircraft operated by international agencies.
- 5.2 It is in this spirit, and bearing in mind that one could consider that the powers granted to the ICAO Council by Article 77 of the Chicago Convention were concerned only with the manner of application of the provisions of that Convention, that Senegal has been led to propose the addition to the text which will be submitted to the Tokyo Conference, of a supplementary article drafted as follows:

ARTICLE

"Nothing in this Convention shall limit the application of the provisions of Article 77 of the Chicago Convention relating to joint operating organizations or international operating agencies for air transport. The ICAO Council shall determine, if necessary, the manner in which the provisions of this Convention shall apply to aircraft operated by the international operating agencies contemplated by Article 77 of the Chicago Convention."

- 5.3 The draft proposed above is given only by way of example and Senegal declares its intention of accepting any article which would meet its objective of avoiding a considerable increase in the difficulties relating to the solution of a question which it considers as being essential, and of taking into account, however, the necessity of detailed studies on this question.
 6. Senegal hopes that the very short notice with which its proposal will have been brought to the knowledge of the States taking part in the Tokyo Conference will not constitute too great an inconvenience for their representatives, and emphasizes, in this regard, that the purely precautionary nature of its objective should not involve a premature discussion on the substance of the question of the nationality and registration of aircraft by an international agency.
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BELGIUM: Proposal

1. In the course of the lengthy discussion engendered by the study of Article 1, paragraph 1 (a) to (d), many delegates pointed out the difficulties they had with these subparagraphs. The difference between (a) and (b) was not apparent to some, or that between (b) and (c) to others. Many examples were examined and it was found that the suggested solutions were often contradictory. The text, it was discovered, omitted certain points and was not clear. Some delegates, observing that subparagraph (d) referred to acts committed on the surface of the high seas, wondered why the case of an act committed over the high seas had not been covered, to which it was replied that (b) had been drafted to cover that point.

2. From reading subparagraph (b) it could reasonably be argued that this was true, but it was found that subparagraph (c) too could cover an act committed over the high seas, a fact which could only add to the confusion of some readers.

3. Several speakers stated that instead of attempting to analyse each of the points covered by (a), (b), (c) and (d), and decide what the intention of the authors of the draft could have been, it would be better to amend the text appropriately to make the rules in question clear and precise.

4. Several attempts were made along these lines, following the rejection of a proposal for one single summary text in place of the separate listing of the subparagraphs. The efforts were, however, unsuccessful.

5. It must be realized that each time legal experts read the subparagraphs prepared in Rome, fresh doubts and reservations arise in their minds as to the exact scope. And those of them who would seek enlightenment from the minutes of the Legal Committee meetings in Munich and Rome will find that they will only increase the confusion and the difficulty which they experience in interpreting the text.

6. This State had considered the possibility of working out a general formula, based on that submitted in Rome by the People's Republic of Poland. We realize, however, that a formula of this nature cannot cover all the cases, for which reason a separate listing of points as in the Rome draft should be retained.

7. At all events, we have attempted to draw up a text which embraces all the cases where the Convention will apply and spells them out. Consequently we propose the following in place of subparagraphs (a), (b), (c) and (d) of Article 1.

8. Article 1 would read as follows:

"1. This Convention shall apply in respect of:

- 1) offences against penal laws.
- 2) acts which, whether or not they are an offence, may or do jeopardize the safety of the aircraft or persons or property therein or which jeopardize good order and discipline on board,

when such offences are committed or such acts are done by a person on board any aircraft registered in a Contracting State, while that aircraft is:"

(original text)

(the remainder would read as follows:)

- "a) in flight in the airspace of a State other than the State of registration; or
- b) in flight in the airspace of the State of registration if a subsequent landing is made in another⁽¹⁾ Contracting State with the said person still on board; or
- c) in flight over the high seas or any other area outside the territory of any State unless the point of departure and the point of arrival of the flight are in the State of registration of the aircraft. In the latter case, however, the Convention shall still apply if the aircraft lands in another State with the said person still on board.
- d) on the surface of the high seas or of any other area outside the territory of any State."

(1) During the Conference, the word "Contracting" was inserted before the word "State".

Comments on the substitute text suggested

9. We have gone back to those main cases of application or non-application of the Convention which were mentioned in the Minutes of the Legal Committee in Rome, but naturally we are, as a general rule, quoting only one example for any specific case. We believe that the new text eliminates all the ambiguity, unnecessary overlapping and some of the obscurity of the draft.

1) An Italian aircraft - Rome/Paris flight: .

- a) The act is committed over France. The aircraft lands in France. Subparagraph a) covers the case.
- b) The act is committed over Italy. The aircraft lands in France. Subparagraph b) covers the case.
- c) The act is committed over Italy, but the aircraft is obliged to turn back and land in Italy. The case is not covered because it is natural that the Convention should not apply here, since the State of registration of the aircraft, the State where the Act was committed and the State of landing are one and the same. No other State is concerned in the matter nor should interfere.

2) A Pakistan aircraft - flight between East and West Pakistan.

- a) The act is committed over India; subparagraph a) covers the case.
- b) The act is committed over Pakistan. The Convention clearly does not apply, and the case is not covered, unless the aircraft lands in the territory of another State, in which case subparagraph c)⁽¹⁾ applies.

3) A United States aircraft - flight San Francisco/Paris, with intermediate stop in New York.

- a) The act is committed over the United States, before New York. The case is not covered and the Convention does not apply, which is natural for the reason given in 1) above.
- b) If, for any reason, the offender is not disembarked from the aircraft at New York and lands at Paris, the Convention applies (case covered under subparagraph b)).
- c) The act is committed between New York and Paris but still over United States territory. This is still the case covered under subparagraph b).
- d) The act is committed between New York and Paris but over the high seas. Subparagraph c) covers the case so the Convention applies.
- e) The act is committed between New York and Paris but over foreign territory. The Convention still applies by virtue of subparagraph a).

⁽¹⁾ Editorial note: The reference should be to subparagraph b).

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- 4) Act committed over the high seas or any other area outside the territory of any State.
- a) One example has been given in d), the penultimate subparagraph of 3 above.
- b) Consider next a flight New York/Montreal. The act is committed over the high seas. The Convention applies by virtue of c).
- c) Imagine a flight between East Pakistan and West Pakistan,

or London/Belfast
or New York/Honolulu

the aircraft being registered in Pakistan, the United Kingdom or the United States, respectively.

The act is committed over the high seas. The Convention will only apply by virtue of subparagraph c), if the aircraft lands in another State, with the offender on Board. (In our opinion, whether it is a Contracting State or not is of little significance, but this point will doubtless be discussed).

The situation would naturally alter if the aircraft making the flight was not registered in the State within whose territory the flight commenced and ended.

Take, as an example, the flight London/Belfast flight carried out by an aircraft not registered in Great Britain.

The Convention would in any event apply by virtue of the general rule in subparagraph c), as the point of departure and arrival would not be located in the State of registration of the aircraft.

CONGO (BRAZZAVILLE): Comments

(Rules 1(3) and 2 of Provisional Rules of Procedure)

1. Congo has much difficulty in accepting the provisions of Rule 2, paragraph 1 of the Provisional Rules of Procedure of the Conference since they prohibit any possibility of joint representation of several States. Undoubtedly this problem was raised at the Hague International Conference by the representative of the Swiss Confederation who expressed the intention of also representing Liechtenstein. The Conference gave a negative reply to this request and it appears that the practice followed at the Guadalajara Conference was in conformity with that of the Hague Conference.

1.1 Nevertheless the Republic of the Congo wishes to present this problem once again to the Conference and more particularly to the Committee on Rules of Procedure, since law is based on real circumstances and the international situation as we know it, whereby States with limited public finances co-exist with the so-called rich States, is a new fact which must be reflected in International Law. It is, in fact, difficult to understand why two States which consider the sending of two delegates is too much of a burden on their finances may not have other alternatives than that of consenting to this heavy financial burden or of considering themselves as non-participants in a Conference which, perhaps, in their view, is of the greatest interest.

1.2 We think that to force in this manner States of limited public resources to financial suicide or absence is not a desirable solution. Besides, the underlying intention of the authors of paragraph 1 of Rule 2, seems in our opinion, above all to be to prevent a delegate from being able to concentrate too much power in his hands. Therefore, it appears that the wording of Rule 2 is too broad. And the Conference could simply accept a rule like that found in Document 8144, Rule 2, 3, p. 14 of Regional Air Navigation Meetings.

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1.3 If this idea cannot receive the approval of the Conference, the Congo would greatly appreciate the adoption of the following amendment to the last sentence of paragraph 1 of Rule 2: In place of "No person shall be the Representative of more than one State" read "No person shall have more than one vote." In case this proposal were acceptable to the Conference, it would be necessary to amend also Rule 18, paragraph 1.

1.4 The Congo earnestly desires that the Conference study with the greatest attention this proposal which is such as to permit joint representation, while rejecting the possibility of multiple voting.

2. Congo (Brazzaville) would also like to have paragraph 3 of Rule 1 amended so that it may be clearly understood that the Conference may invite an international organization to attend as an observer. It is true that the practice followed up to the present time permits paragraph 3 to be interpreted in this manner, but it seems to us that if that is the understanding, it would be better understood if stated. Also we propose that the words "or by the Conference" be added immediately after "International organizations invited by the Council of ICAO".

3. Moreover, for many reasons, not the least of which are reasons of solidarity and efficiency, two or more States may find it necessary to be jointly represented by one single delegate. The Rules of Procedure in respect of the present Convention should allow for such a possibility.

FRANCE: Comments

1. The Delegation of France to the International Conference on Air Law considers that the following observations are necessary to clarify and complete the comments transmitted by the Representative of France on the Council of ICAO in his letter dates 22 July 1963.

2. In the interests of both form and substance, the different parts of the Convention should be more sharply defined, in particular the two main aspects of the Convention: that of criminal jurisdiction (Articles 1 to 3 inclusive) and that of the powers of the aircraft commander (Articles 5 to 9 inclusive). These should comprise a Section I and a Section II respectively; the provisions covered in Articles 10 and 11 (obligations of States in whose territory any person is disembarked or to the authorities of which he is delivered), Article 12 (extradition) and Article 4 (Hijacking) should be grouped together in a third Section (general provisions) and lastly a fourth section should contain the final clauses.

3. Presented in this manner the text would be much clearer, and the powers of the aircraft commander would be come more readily apparent. He can not be required to be as conversant with comparative criminal law as would be necessary if the Convention were to confer upon him the right and the obligation to take action for offences of any nature committed on board his aircraft.

4. Subject to these general comments, a study of the Convention, article by article, evokes the following comments:

Article 1 Paragraph 1

5. Subparagraph 2) b) and c) should specify: "in flight between the two points of landing".

Paragraph 2 (Definition of time in flight)

6. The powers of the aircraft commander should be limited to that period of time during which the doors of the aircraft remain closed.

Article 2

7. The Delegation of France does not propose to suggest any amendment to the text of this Article as it now stands.

Article 4

8. This Article covers at one and the same time the arrest of the person committing the offence, the treatment of the other passengers and the restoring of control of the aircraft. It would seem that these aspects should be treated separately. There should therefore be a subparagraph for each of them.
9. Furthermore, the words "where applicable" should be deleted where they refer to the notification "to the state over whose territory the said act or threat occurred".
10. As indicated above, this Article should be placed at the end of the Convention (Section III).

Article 5

11. It is very important to ensure that these powers are exercised only in the event of acts which may jeopardize safety or good order, i.e. acts covered under Article 1, paragraph 1, 2).

Paragraph 2 (Right to require the assistance of the crew and the passengers)

12. The words "or passenger" should be deleted from the second sentence so that a passenger may not be able to take preventive measures without the authorization of the aircraft commander.

Paragraph 3

13. The first sentence should be deleted as it extends the powers of the aircraft commander, contrary to the principles laid down in Article 1, to a period when the aircraft is no longer in flight as defined by the Convention.

Article 6

14. It must be made absolutely clear that the provision of paragraph 1 applies only in the case of acts specified in Article 1 paragraph 1, 2).
15. Furthermore, since the aircraft commander ought not to be required to judge whether or not an offence has been committed according to the penal laws of any state, paragraph 2 serves no purpose and should be removed.

Article 7

16. Paragraph 2 should be removed for the same reason.

Article 9

17. The Delegation of France is of the opinion that this Article should be deleted; as presently written, these provisions are in conflict with the principle whereby no one can be wholly freed from responsibility for his actions, even though the circumstances of the aircraft commander's peculiar position are grounds for not judging that responsibility too harshly.

Article 10 Paragraph 2

18. The first sentence of this paragraph should be more precise. A state can only take custody of an individual for acts committed outside its territory if those acts constitute an offence under its own law.
19. The following amendment is suggested:

"In the event that the act imputed to the person mentioned in paragraph 1 above constitutes an offence under the law of the State in whose territory he is disembarked, that State shall take custody of that person if it considers that the circumstances justify such action, allowing him every protection which persons in custody are granted under its law."

Paragraph 5

20. The words "detained by virtue of penal or extradition measures" should be replaced by "detained for penal or extradition proceedings".

Paragraph 6

21. In the fifth line, the word "depart" should be replaced by "send back". Additionally, the last two lines should be deleted ("or, if there is no such State, to the territory of the State in which he began his journey by air.").

Paragraph 7

22. This paragraph should be deleted.

Article 12 Paragraph 1

23. The word "also" is superfluous and should be deleted.

Paragraph 2

24. In order to clarify the scope of this paragraph, the present text should be replaced by the following:

"With regard to the foregoing provisions,⁽¹⁾ extradition shall be governed by extradition treaties entered into by Contracting States. They shall not be in any way affected by this Convention."

FINAL CLAUSES

Article F

25. The phrase "for whose international relations it is responsible", which appears twice in this Article, should be replaced by "for which it is internationally responsible".

RULES OF PROCEDURE

26. The French Delegation proposes that an additional provision be added, in accordance with Rule 28 of these rules. The new provision would state that the rules of procedure governing the ICAO Assembly should apply, as an additional measure, in respect of all matters not covered in the rules of procedure as set forth in Doc No. 3 of the Conference.

(1) Sic. The French text reads as follows: "Compte tenu des dispositions qui précèdent ..."

SWEDEN: Proposals

Article 1

1. The following wording is proposed:

1. This Convention shall apply in respect of:

- a) offences against penal laws;
- b) acts which, whether or not they are an offence, may or do jeopardize the safety of the aircraft or persons or property therein or which jeopardize good order and discipline on board,

when such offences are committed or such acts are done by a person on board an aircraft registered in a Contracting State.

2. Subject to the provisions of Article 5, this Convention is applicable only for offences committed or acts done on board the aircraft, while it is:

- a) in flight in the airspace of a State other than the State of registration of the aircraft; or
- b) alternative I: in flight between two points of which at least one is outside the State of registration of the aircraft, irrespective of whether the landing actually takes place or only was intended to take place in another State than the State of departure; or

alternative II: in flight between two points of which at least one is outside the State of registration of the aircraft, provided that, in the case of an aircraft flying from a point in the territory of the State of registration of the aircraft and in the airspace of the same State and with a decision taken to return to a point in the same territory, the offence was not committed or the act done after this decision; or

- c) in flight between two points in the territory of the State of registration of the aircraft if a subsequent landing is made in another Contracting State with the said person still on board; or
- d) on the surface of the high seas or of any other area outside the territory of any State.

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3. For the purposes of this Convention, an aircraft is considered etc., as in para. 2 of the draft.

4. As in para. 3 of the draft.

2. Reasons:

2.1 Ad 2 b) The Swedish delegation in Rome made a drafting proposal, which did not change this provision, only its place. It was rightly held against that proposal that it did not cover the case of an aircraft which would return to its starting point, but no action was taken to correct the Rome draft, which is open for the same criticism. In order to invite the Conference to make a decision on this point, two alternatives are presented (and others imaginable), of which the first one is preferred.

2.2 It should be noted that the proposal from Rome is not repeated and that certain cases under subpara. b) are covered also by subpara. a).

2.3 In other aspects. The proposal is merely a drafting suggestion, having as its purpose to make the article less heavy and to move the words "subject to the provisions of Article 5" to a more appropriate place. (The debt to a similar Finnish proposal in Doc. 7 is acknowledged.)

Article 2

3. A. Subpara. 2 b) should be deleted.

4. Reasons: To this delegation it seems difficult to give reasons why the Convention shall prescribe that Contracting States shall take measures to follow Art. 2, para. 1, and not other parts of the Convention. This Delegation is of the opinion that ratification of a convention implies the duty for the ratifying State to see to it that all provisions in the Convention are incorporated in or otherwise made parts of the law of that State. Art. 2, 2 b) can only lead to confusion and misunderstanding.

5. B. Para. 3 should be amended as follows:

A Contracting State which is not the State of registration of the aircraft may not delay or interfere with an aircraft in flight in order etc. as in the draft.

6. Reasons: If the aircraft has landed, the Contracting State where it landed must have the full right to intervene, however taking into account particularly Art. 11 of the Convention.

Article 3

7. First preference: Delete the whole article (as in the Polish proposal in Doc. 13, No. 4).
8. Second preference: Delete paras. 1 and 2 and redraft para. 3 as follows:

Whenever, where a final judgment has been rendered by the competent authorities of one Contracting State in respect of a person for an offence, and the laws of another Contracting State permit further trial, the competent authorities of that State shall, if imposing a new punishment, take into account the punishment or part of punishment already carried out in the first State.

9. Third preference: Redraft para. 2 as follows:

The provisions of paragraph 1 of this article shall not apply if the offence was committed in the second State or on board an aircraft registered in that State or if the person is etc. as in the draft.

10. Reasons: Almost every State applies the rule "ne bis in idem", but not always in the same manner. Article 3, however, forces upon the States a special manner, in which this rule has to be applied in the limited number of cases covered by the Convention. Consequently, this article, on the one hand, adds very little to the value of the Convention but, on the other hand, represents an obstacle for many States otherwise willing to accept the Convention.
11. The third preference aims at reducing the disadvantages as much as possible.

Article 4

12. In para. 1 the first sentence should be amended to read as follows:

Following the commission by violence or threat of violence of any act of interference, seizure, or other wrongful exercise of control of an aircraft in flight, 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. Each Contracting State in which the aircraft lands after such act or threat shall take custody, in accordance with its own law, of the person committing such act or threat. The Contracting State taking custody of such person shall immediately notify the State of registration of the aircraft, and, where applicable, also the State over whose territory the said act or threat occurred, of such action.

13. Reasons: This proposal is supposed to be of a drafting nature. As now worded, this sentence does not seem to cover "successful", completed hijacking by threat of violence but "unsuccessful" attempt to hijack by violence. It is presumed, that hijacking of this kind should be covered by the article. "Unsuccessful" attempts do not seem to require special provisions in addition to the general rules of the Convention.
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SWITZERLAND: Proposal

(Rule 14 of Provisional Rules of Procedure)

Amplify Rule 14 as follows:

"... the deferment of discussion of an item, the closure of the list of speakers or the closure of the debate on an item. After ..."

Reason: Closing the debate on an item is a very drastic measure which can affect the interests of all those remaining on the list of speakers. Closing the list of speakers, a much less drastic measure, would often meet the situation perfectly adequately.

Doc No. 27

SWITZERLAND: ProposalArticle 5

The existing paragraph 3 should be redrafted as follows and inserted as a new Article after the existing Article 6:

1. The powers conferred by Article 5 and 6 on the aircraft commander, other crew members and passengers may be exercised with respect to an act contemplated in Article 1, paragraph 1, 2), when committed at any time from the moment when embarkation begins until the moment when disembarkation is completed.
2. In the case of a forced landing outside an airport, the powers of the aircraft commander, other crew members and passengers, outlined in the first paragraph of this Article, shall continue until competent authorities of the State of landing take over the responsibility for the aircraft, and persons and property on board.

Reasons: These provisions refer not only to the provisions of Article 6 but also to those of Article 5. It therefore seems advisable, without altering their substance, to include them after the former Article.

It might have seemed more correct to include these provisions in Article 5, but the Delegation of Switzerland cannot suggest a satisfactory text and therefore withdraws the relevant proposal contained in Doc. 14.

SWITZERLAND: ProposalArticle 10

<u>Draft:</u>	Substance:	<u>Swiss Draft:</u>
Paragraph 1	Free Disembarkation in accordance with 6.1	10 Paragraph 1
Paragraph 2	Taking into custody after delivery under 6.2. Notification of the detention.	10bis Paragraph 2 10bis Paragraph 3
Paragraph 3	Preliminary investigation Reports	10bis Paragraph 1 10bis Paragraph 3
Paragraph 4	Release from custody	10bis Paragraph 4
Paragraph 5	Continuation of journey after 6.1	10 Paragraph 2
Paragraph 6	Return after 6.1	10ter Paragraph 1
Paragraph 7	Reservation regarding immigration laws, etc.	10ter Paragraph 2

<u>Swiss Draft:</u>	Substance:	<u>Draft:</u>
10 Paragraph 1	Free disembarkation in accordance with 6.1	10 Paragraph 1
Paragraph 2	Continuation of journey after 6.1	Paragraph 5
10bis Paragraph 1	Preliminary investigation after 4/6.2	Paragraph 3*
Paragraph 2	Taking into custody after 4/6.2	Paragraph 2*
Paragraph 3	Notifications	Paragraph 2 & 3*
Paragraph 4	Release from custody	Paragraph 4*
10ter Paragraph 1	Return after 4.1/6.1	Paragraph 6*
Paragraph 2	Reservation regarding immigration laws, etc.	Paragraph 7*

(* See also Article 4)

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Article 10

1. Any Contracting State shall allow the commander of an aircraft registered in another Contracting State to disembark any person pursuant to Article 6, paragraph 1.
2. Any person who has been disembarked shall, unless he is detained by virtue of penal or extradition measures, be at liberty as soon as practicable to continue to any destination of his choice.

Article 10bis

1. Any Contracting State in whose territory an aircraft lands following the commission of an act contemplated in Article 4, Paragraph 1, or to which the aircraft commander delivers any person pursuant to Article 6, Paragraph 2, has the right and the obligation immediately to make a preliminary investigation in order to establish the facts. In the absence of any special provision, this investigation shall be governed by the rules of criminal procedure of the said State.
2. The State entrusted with the preliminary investigation pursuant to the preceding paragraph shall take custody of the person suspected of an act contemplated in Article 4, Paragraph 1, or Article 6, Paragraph 2, for the duration of this investigation, if and for as long as it considers that the circumstances warrant such an action and subject to any provisions to the contrary in its own laws.
3. The State taking custody shall promptly notify any State in whose airspace the act involved was committed, the State of registration of the aircraft and the State of nationality of the detained person of the fact that such person is in custody pursuant to the preceding paragraph and of the circumstances which warrant his detention. In addition it shall promptly report to those same States the findings of the preliminary investigation that has been opened pursuant to paragraph 1 of this Article and such statements or other evidence as it has obtained up to that time.
4. On the expiry of a period fixed by the law of the State which detains the person concerned, which period shall run from his disembarkation, the person detained shall be set at liberty unless within such period:
 - a) the competent authorities of that State have notified him that a criminal investigation is being opened or that he is charged with an offence under its law and of the nature of that offence, or
 - b) some other State has made a demand for temporary arrest with a view to extradition or a demand for extradition justifying his retention in custody.

Article 10ter

1. Without prejudice to Article 10, Paragraph 2, the State in whose territory a person has landed after committing an act contemplated in Article 4, Paragraph 1, or has been disembarked or delivered up in accordance with Article 6 may if such person is not a national or permanent resident of that State, return him to the territory of the State of which he is a national or permanent resident, or to the territory of the State in which he began his journey by air, those States being obliged to receive him.
 2. Neither disembarkation nor delivery, nor the return of the person concerned shall be considered as admission to the territory of the State concerned for the purposes of the laws of the Contracting State relating to entry or admission of aliens.
-

SWITZERLAND: QuestionsArticle 1 - Scope of the ConventionParagraph

1. Acts

- | | |
|--|---|
| a) Offences? | + |
| Concept: general (offence) | + |
| more restrictive? | - |
| Reference to laws? | + |
| Category: penal laws? | + |
| others? | |
| State? | - |
| of registration? | |
| Contracting State? | |
| general? | |
| competent to prosecute? | |
| b) Acts which jeopardize safety? | + |
| Subject endangered: | |
| Aircraft? | + |
| Person on board | + |
| Property on board | + |
| Good order and discipline on board? | + |
| Others | - |
| Nature of the danger: | |
| Real and potential? | - |
| generally? | |
| only to the aircraft and persons and
property on board? | + |
| to good order and discipline also? | - |

- Real only?
 generally -
 good order and discipline only?
 in any other manner?
2. Place of the act:
 committed on board by the author? +
 committed elsewhere with results on board? -
3. Aircraft:
 Limitation as to registration? +
 Contracting State? +
 in any other manner?
 Limitation as to type? -
 aeroplanes only?
 in any other manner?
 Limitation as to type of operation, see paragraph 3
 International nature of the flight (See Doc 8302-LC/150-2
 p. 95)
 Limitation by the type of manoeuvres performed by the aircraft? +
 Aircraft in flight? +
 Exception: extra-territorial areas? +

Paragraph 2

Definition of "in flight"

- for the rule governing jurisdiction in Article 2:
 in accordance with Article 2, paragraph 3 of the
 Rome Convention +
 in any other manner?
- for the rule governing piracy, see Article 4
- for rules dealing with the powers of the aircraft
 commander; see Article 5, paragraph 3

Paragraph

Application regardless of the nature of the operation? -

State Aircraft:

Wholly excluded? +

Exceptions? -
 transportation for payment
 others?

Definition: +
 in accordance with Article 3b of the Chicago Convention?
 otherwise?

Civil aircraft:

Wholly covered? +

Exceptions:
 in accordance with Article XXVI of the Hague Protocol?
 others?

Article 2 - Competence

SYSTEM: Priorities?

Conflict of jurisdiction, bound up with the usual
 recognition of the jurisdiction of the State of
 registration? +

Other?

Paragraph 1

Principle: Recognition of the jurisdiction of the State of
 registration? +

 general principle? +

 restriction to Contracting States? -

Paragraph 2

(Measures to be taken by Contracting States)

Obligation of the State of registration:

- to establish its criminal jurisdiction? +
- to exercise its jurisdiction in the specific case? -

Obligation of every Contracting State:

- to recognize the criminal jurisdiction of the State of registration: +
 - only if a Contracting State? +
 - without restriction? -

Paragraph 3

Limitation of the right of Contracting States to exercise their jurisdiction to affect aircraft operations: +

Extent of the limitation:

- State of registration excepted? +
- State of landing excepted: -
- Others?

Form of limitation:

- Prohibited (?) generally with special reservations +
- Others?

Substance of the reservations:

Exercise of criminal jurisdiction? -

Effect on aircraft operation? +

- by measures liable to delay or impede generally +
- by the order to land only? -
- in any other manner?

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Purpose of the measures:

- without restriction
- exercise of jurisdiction
- criminal only?
- without restriction?
- other?

Conditions of the reservation:

- effects of the offence on the territory?
- offence committed
 - by a national?
 - a permanent resident?
 - others?
 - against a national?
 - a permanent resident?
 - others?
 - by and against?
 - by or against?
- offence which jeopardizes national security?
- offence which violates the rules of the air?
- international obligation:
 - without restriction?
 - based on agreement?
 - worldwide agreements only?
 - multilateral agreements only?
 - without restriction?
 - explicit inclusion of this Convention
(see for example Article 10, paragraph 3)?
 - others?

Paragraph 4

Reservation in favour of other jurisdictions?

type: restriction?	-
criminal jurisdictions only?	+
other?	
basis: without restriction?	-
national law only?	+
scope: without restriction?	+
Contracting States only?	-
other conditions?	-

CANADA: ProposalsArticle 1Amendment to paragraph 2:

Delete the words "and subject to the provisions of Article 5" and substitute the following therefor:

"but without limiting the powers conferred on aircraft commanders in Article 5".

Amendment to paragraph 3, subparagraph 2:

Replace the present text of Article 1, paragraph 3, subparagraph 2, by the following:

"State aircraft means

- (a) an aircraft used for military purposes
 - (b) an aircraft used for Customs purposes
 - (c) an aircraft used for police purposes
 - (d) a Government aircraft used for other non-commercial purposes."
-

CONGO (BRAZZAVILLE), IVORY COAST AND UPPER VOLTA: Comments

1. The Republic of the Congo, the Republic of the Upper Volta and the Republic of the Ivory Coast share the views already expressed by other Delegations, namely that the draft prepared by the Legal Committee forms a satisfactory basis for the work of this conference.

2. The Republics of the Congo, the Upper Volta and the Ivory Coast would, however, draw the attention of Delegates to Article 77 of the Chicago Convention which, in allowing for the constitution of joint air transport operating organizations, has specified that: "The Council shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies". This point was subsequently examined by a committee of experts set up by the ICAO Council on 16 March 1960. It decided that the Council could not, under Article 77, recognize the right of an international organization to register aircraft, and its report, dated 30 June 1960, recorded the decision not to continue any further with the study of Article 77, in the absence of any specific cases. The Republics of the Upper Volta, the Ivory Coast and the Congo, and those States which in conjunction with them have constituted "Air Afrique", are of the opinion that it should be possible, under the above-quoted provision of Article 77, to find a specific solution other than national registration.

2.1 All "Air Afrique" aircraft are at present registered in the Ivory Coast, and there seems to be a risk that if a specific solution is provided for aircraft of other than national registration, the courts of the Ivory Coast would finally be overburdened to a regrettable degree.

2.2 These States, therefore, support the insertion in the text of an additional Article with the wording submitted by Senegal, on the understanding that the conference takes a conservatory⁽¹⁾ measure to avoid any prejudice to the ultimate conclusions of the Committee of experts. As a case has arisen today, it would be highly desirable and only natural for the latter to resume its activity.

3. In Article 1, Paragraph 3, 2, mail aircraft should be specifically included as State aircraft.

4. We have great difficulty accepting Article 2, Paragraph 4, since we have the impression that it nullifies paragraphs 1, 2 and 3 of Article 2. As was emphasized by Italy, the question is one of finding a possible remedy for the absence of any international rule governing the extra-territorial jurisdiction of a State. Paragraph 4 of Article 2, however, removes all hope of obtaining a solution. If there is any support, I would therefore propose that the paragraph be deleted.

⁽¹⁾ Precautionary

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5. The Republics of the Congo, the Ivory Coast and the Upper Volta believe that it would be extremely useful to state explicitly that Article 5, paragraph 4, concerns a "pilot". These States share the fear voiced at other times by ICAO and IATA of seeing the control of an aircraft entrusted to an ex-pilot or a layman, since the advantages of such an innovation are open to question.

6. Although the Republics of the Congo (Brazzaville), the Ivory Coast and the Upper Volta urge the Conference to place in the pilot-in-command the confidence which for obvious reasons of safety he needs, they are anxious that the Conference should not to make him an "exception"; they would be satisfied with the addition of a clause which would allow the victim of any sanction to have recourse, on condition that the burden of proof rests with him.

HUNGARIAN PEOPLE'S REPUBLIC: Proposals

Article 1, paragraph 1.

1. This Convention shall apply in respect of:

- 1) any offence against penal laws;
- 2) any act which, whether or not it is an offence, may or does jeopardize the safety of the aircraft or persons or property therein or which jeopardizes good order and discipline on board,

- to be termed, for the purposes of this Convention, "offences" (1)) and "certain other acts" (2)) -

when such ... (the rest of the paragraph remains unchanged)

Observations: 1. The above has been proposed without prejudice to the major issue whether the Convention be limited or not to offences only.

2. Acceptance of this amendment would involve forthcoming modifications in Article 5, para. 1, Article 5, para. 3 and Article 6, para. 1. These latter modifications being, however, of a purely derived and drafting character the Hungarian Delegation will not submit them for plenary discussion.

Article 1, paragraph 3.

3. This Convention shall be applicable only to civil aircraft. For the purposes of the present Convention all state aircraft, including aircraft used in military, customs and police services, are deemed to be non-civil aircraft.

HUNGARIAN PEOPLE'S REPUBLIC: Proposals

1. Article 2., paragraph 3., subparagraphs b) and c)

b) the offence has been committed by a national or permanent resident, or against a national, a legal entity or permanent resident of such State;

c) the offence is against the security of such State;

2. Article 3

1. Where a final judgment has been rendered by the competent judicial authorities of one Contracting State in respect of a person for an offence, such person shall not be convicted in another Contracting State for the same act if he was acquitted, or if, in the case of a conviction, the punishment was remitted or fully carried out, or if the time for the carrying out of the punishment has expired, - unless such person is a national or a permanent resident of the second State or if the act constituted an offence against the security of such State, and its laws permit further trial.

2. Whenever, pursuant to the preceding paragraph a new punishment may be imposed by the competent judicial authorities of another Contracting State those authorities shall take into account the punishment or part of punishment already carried out in the first State.

3. Article 4., paragraph 1.

After the words "shall take custody," insert "pending and"
(in accordance with....)

4. Article 4., paragraph 2.

To insert and terminate the paragraph, after the words "and its cargo to the persons": "entitled to possession under the law of the State of registration of the aircraft."

5. Article 5.

i) paragraph 4 of the Article to become paragraph 1 and to read as follows:

1. For the purposes of this Convention, the aircraft commander is the person on board an aircraft who is responsible for the operation and safety of that aircraft under the laws and regulations of its State of registration.

ii) paragraph 1 to be renumbered paragraph 2.

iii) paragraph 2 to be renumbered paragraph 3.

iv) paragraph 3 to become a separate Article (Article 7) and to read as follows:

6. Article 7.

The powers conferred on the aircraft commander, other crew members and passengers by Article 5 as well as those conferred on the aircraft commander by Article 6 may be exercised with respect to offences and certain other acts when committed or done at any time from the moment when embarkation begins until the moment when disembarkation is completed. In the case of a forced landing outside an airport, such powers of the aircraft commander, crew members and passengers shall continue as to acts committed on board until competent authorities of the State of landing take over the responsibility for the aircraft, persons and property on board.

v) Article 8 become paragraph 4 of Article 5, with its text unchanged, excepted that instead of "provisions of Article 5" - "provisions of of the present Article" inserted.

7. Article 6.

Through the deletion - proposed hereby - of Article 7, the dispositions of this latter Article be incorporated in paragraphs 1 and 2 of Article 6 which read, therefore, as follows:

1. The aircraft commander may, in so far as it is necessary for the purposes of subparagraphs a) and b) of paragraph 1 of Article 5, disembark in the territory of any State in which the aircraft lands any person who he has reasonable grounds to believe has committed, or is about to commit, offences or certain other acts on board the aircraft. In case of such disembarkation the aircraft commander shall report the fact thereof and the reasons therefor to the authorities of the State of disembarkation.

2. Unchanged, with the addition of the following sentence:

In case of such delivery the aircraft commander shall transmit to the authorities of the State of delivery evidence and information which, in accordance with the law of the State of registration of the aircraft, are lawfully in his possession.

Doc No. 34

UNION OF SOVIET SOCIALIST REPUBLICS: Proposals

Article 1

The following wording is proposed for Article 1, paragraph 3:

" This Convention shall be applicable only to civil aircraft and shall not be applicable to aircraft used in military, customs or police services."

Article 2

It is proposed that the following words in the second line of Article 2, paragraph 3, be deleted:

" delay or"

ITALY: Proposals

It is proposed that Articles 1 and 2 of the Draft Convention be reworded as follows:

"Article 1

1. The State of Registration is competent to exercise jurisdiction over any offence against its penal laws and acts which, whether or not they are a criminal offence, may or do jeopardize the safety of the aircraft or persons or property therein or which jeopardize good order and discipline on board,

when such offences are committed etc. (the remainder as in the existing Article 1 without change).

2. Each contracting State shall take such measures as may be necessary ... etc. (the remainder as in the existing Article 2, paragraph 2 a) without change)."

"Article 2

A Contracting State which is not the State of Registration of the aircraft may not etc. (the remainder as in the existing Article 2, paragraph 3, without change)."

"Article 3

This Convention does not supersede any basis for criminal jurisdiction of a State under its own law."

"Article 4

(See text of existing Article 1, paragraph 3: State Aircraft)"

NOTE: Delete paragraph 1, 1) and 2) of Article 1.

UNITED STATES OF AMERICA: Proposal

1. Deleted paragraph (2) (a) and (b) of Article 2 and substitute in lieu thereof the following:

"2. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction as the State of Registration over acts and offences committed on board aircraft registered in such State but the extent to which and the manner in which such jurisdiction shall be established and enforced is left to the sovereign discretion of each Contracting State."

2. Delegates are referred to Document No 9, paragraph 7¹ for a detailed explanation of the reasons for this proposal.

¹

This volume, p. 123

NETHERLANDS: Proposals

1. The English and French texts of Article 2, paragraph 1, are not drafted along the same lines.

1.1 The expression used in the French text is "competent pour connaître des infractions"; in the English text it is: "competent to exercise jurisdiction".

1.2 The Netherlands Delegation believes that the English text is ambiguous. It could be interpreted more broadly than the French text and give rise to the impression that the State of Registration, as such, would have the right to exercise its sovereign authority within the territory of another Contracting State. That is to say, it could be inferred that the State of Registration had the right to impose its penal law and its rules of criminal procedure within foreign territory.

1.3 The same problems do not arise with the French text, for which reason the Netherlands Delegation proposes that the Drafting Committee be invited to align the English text with the French text.

2. The same difficulty arises in connexion with paragraph 2, b) of Article 2. Here again the French and the English texts differ, the former using the word "competence", the latter using the broader concept of "jurisdiction".

2.1 The Netherlands Delegation supports the United States and Swedish proposals for the deletion of subparagraph b) altogether. This provision is certainly superfluous and may cause confusion.

2.2 However if the proposed deletions are not accepted by the Conference, the Drafting Committee should align the English text with the French text in this instance also.

3. With regard to Article 2, paragraph 3, the Netherlands Delegation proposes the following amendment:

Add a new subparagraph f) reading as follows:

"f. such action is taken upon the request of the State of Registration or the aircraft commander."

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Reasons. The listing under paragraph 3 has a limiting effect which seems to preclude any intervention by the States mentioned, except in the cases specifically quoted therein, even if such intervention is requested by the State of Registration or the aircraft commander. As the following example will show, such a limitation would be unduly restrictive. An aircraft is stolen within a State of Registration by a national of that same State. The thief escapes with the aircraft to another State. If the State of Registration requests that the thief be arrested and the aircraft seized, the State receiving the request should not be prevented by the terms of Article 2 from acceding thereto.

SWITZERLAND: Questions

Questions arising out of Article 3 (ne bis in idem)

Paragraph 1

- Subject matter: Exclusion of criminal prosecution in another Contracting State for the same deed? +
otherwise?
- Conditions in the first Contracting State:
Judgement: taken effect? +
others?
- Return: by competent authorities? +
others?
- Acquittal +
or in the case of a conviction: +
Remission of punishment? +
punishment carried out? +
time for carrying out of punishment expired? +
others?

Paragraph 2

Non-applicability of paragraph 1

- Conditions:
- Laws of the second State permit further trial? +
- Other alternatives:
regarding the offender:
- National of the second State? +
- Permanent resident of the second State? +
- Others?
- regarding the offence:
- Effect on the national security of the second State? +
- Others?

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Paragraph 3

Principle:	taking into account of the punishment in the event of further conviction	+
Subject:	punishment imposed?	-
	punishment carried out?	+
	or part of the punishment already carried out otherwise?	+
Nature:	taking into consideration generally?	+
	Difference:	
	application in the case of similar sentences	-
	Taking into consideration in the case of dissimilar sentences?	-
	otherwise?	

ARTICLE 4 (Hijacking)

Principle:	OBLIGATION TO RESTORE THE LEGAL SITUATION?	+
	Otherwise?	
Scope:		
	Aircraft "in flight":	
	- as under Article 1, 2?	+
	- otherwise?	
	International character of the operation:	
	- as under Article 1, 1?	
	- otherwise?	

Paragraph 1

Act: Illegal seizure of an aircraft in flight?	+
Threat of doing same?	+
By violence?	+
Other elements?	
Obligations of Contracting States:	
Duty to render assistance:	
Duty to render assistance:	
Purpose: to restore control of the aircraft to its commander?	+
to preserve control of the aircraft by the commander?	+
other?	
Subject matter: appropriate measures?	+
necessary measures?	-
otherwise?	
Limitations as to place?	
in the territory of the State concerned?	
in the sovereign territory of another State?	
in neighbouring territory?	
in the territory of Contracting States?	
Limitation in time	
during the flight?	+
otherwise?	

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Duty to place the hijacker under temporary arrest after the landing?	+
Reference to national laws?	+
Notification of the arrest?	+
To be notified: State of registration?	+
State where the act was committed?	+
Others?	
Notification of resumption of control by rightful State	-
Procedure in conformity with Article 10, 2-6?	?
- arrest and notification in accordance with paragraph 2?	
otherwise?	
- Preliminary investigation and notification in accordance with paragraph 3?	
Otherwise?	
- release from or continuation in custody in accordance with paragraph 4?	
Otherwise?	
- Continuation of journey in accordance with paragraph 5?	
Otherwise?	
- Deportation in accordance with paragraph 6?	
Otherwise?	

Paragraph 2

Other obligations of the State where the landing is made (See Article 11)?	+
- Duty to restore the aircraft and its cargo to their rightful owners?	+
- Duty to permit the journey to be continued?	+
Persons: Crew?	+
Passengers?	+
Reservation: as soon as possible? (Fr. "possible", Sp. "posible")	
as soon as "practicable"?	Eng.
(See Doc LC/DT 683, lit.b:)	
Special provision dealing with the extradition?	-
Special provision dealing with the competence of the State where the landing is made	-

NETHERLANDS: Comments

Article 1(1) a) - d)

The Netherlands Delegation is of the opinion that the Convention should apply in respect of the following cases:

- a) flight in the airspace of a State other than the State of registration;
- b) flight with point of departure situated outside the State of registration;
- c) flight with actual or planned point of landing outside the territory of the State of registration;
- d) flight over the high seas or of any other area outside the territory of any State unless the points of departure and landing are situated within the State of registration;
- e) on the surface of the high seas or of any other area outside the territory of any State;
- f) in flight between two points in the territory of the State of registration if a subsequent landing is made in another Contracting State with the said person still on board, inasmuch as the author of the offence or act was unknown during the intermediate stop in the State of registration.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC: Proposal

Article 2

It is proposed that the subparagraph "e", paragraph 3, be deleted.

Doc No. 41

GREECE: Proposal

The following text, subject to drafting improvements,
is suggested to replace paragraph 3 of Article 1:

" This Convention shall not be applicable to
aircraft used in military, customs, police, or
official Government services."

SWITZERLAND: Proposal

Article 1(3)

This Convention shall not apply to cases of offences committed or acts done on board military, customs or police aircraft or on board Government aircraft used for other official purposes.

CANADA: Proposal

Amend Article 2, paragraph 4, by adding the following:

"at the time of ratification of this Convention or which it incorporates into its national laws in the future."

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GREECE: Proposal

To add at the end of subparagraph 1 of paragraph 1 of Article
1 the words:

"of the State of registration of the aircraft".

Doc No. 45

FEDERAL REPUBLIC OF GERMANY: Proposal

Article 2

Add this sentence to paragraph 1:

"If an aircraft is registered with an international agency in
accordance with a decision taken by the Council of the Inter-
national Civil Aviation Organization pursuant to Article 77
of the Convention on International Civil Aviation, each member
State of that international operating agency shall have the
competence of a State of registration."

REPORT OF THE CREDENTIALS COMMITTEE

1. At its first plenary meeting held on 20 August 1963 the Conference established a Credentials Committee. On 24 August 1963 at 9:30 a.m. there was a meeting of this Committee which was composed as follows:

Mr. O.S. Seradj (Afghanistan)
G. Sicotte (Canada)
S. Cacopardo (Italy)
J.F. Franco (Panama)
E.J.L. Braure (Senegal)

2. On a proposal made by the Representative of Italy and supported by the Representatives of Afghanistan, Canada and Senegal, the Representative of Panama was elected Chairman.

3. The Secretary of the Conference announced that the Representative of Panama apologized for not being able to be present at the meeting, as he had been detained by urgent business. On the Secretary's advice the Committee then embarked upon its task.

4. The Committee examined the credentials of 51 States, 7 of which had been sent by telegram, and those of 4 international organizations. They were judged to be in good order, subject to written confirmation from the competent authorities of the States concerned, in respect of credentials that had been sent by telegram.

5. In addition to the foregoing, the Committee examined the case of the Representative of one State which had not submitted credentials but had stated that they would be forthcoming at a later time. The Committee decided to admit the Representative to the Conference with the customary reservation, namely that satisfactory letters of credential should be presented within a reasonable period.

6. Five of the States referred to in paragraph 4 above were represented by observers, as was also the State mentioned in paragraph 5. The Committee agreed that the President of the Conference should write to the Tokyo Embassies of the States concerned and invite them to specify whether their respective governments had intended that their observers should have the right to vote.

7. The meeting adjourned at 10:00 hours.

J.F. Franco
Chairman of the Credentials Committee

CONGO (BRAZZAVILLE), IVORY COAST, UPPER VOLTA AND SENEGAL: Proposal

New Article

In the event that aircraft operated by an international operating agency have a specific registration, other than national:

- i) The member States of such agency shall take appropriate measures to permit the exercise of the jurisdiction which this Convention vests in the State of registration;
 - ii) Contracting States shall recognize the right of any one of the member States of such an agency to exercise the criminal jurisdiction vested in the State of registration.
-

UNITED KINGDOM: Comments

Article 10

Paragraph 2. The U.K. would favour a more generalised requirement to inform interested States.

Paragraph 3. The U.K. proposes that the words "establish whether any offence has been committed" should be deleted and replaced by "collect what evidence is available in accordance with its laws".

Reason. It appears to be inappropriate in this context to require the State of Landing to reach a conclusion whether an offence has been committed.

Paragraph 4. This paragraph seems to be too rigid and unnecessarily detailed. It should be sufficient to provide that the person should be retained for such time as is reasonably necessary to enable any criminal proceedings to be instituted or a report for extradition to be made.

Paragraph 5. The U.K. proposes the addition after the words "penal or extradition" in line 2 of the words "or immigration".

Reason. This addition is necessary in order to preserve the full right of the State to enforce the removal of an inadmissible person. Without it, a disembarked person would receive more favourable treatment than a person who had landed without having caused any incident.

Paragraph 6. The U.K. will propose the deletion of this paragraph as superfluous. Normal international practice is to return ~~un~~ desired aliens to the country of their nationality or the country from which **they** came and for that country to accept them. There seems no need for an exceptional provision in the field of air law.

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Paragraph 7. The U.K. is in agreement with the purpose of this paragraph but proposes that it should be strengthened so as to read as follows

"Nothing in this Article shall affect the laws of a Contracting State relating to the entry or admission of persons or to their expulsion from its territory."

The use of the word "persons" rather than "aliens" is proposed to deal with the case of immigrants from British Commonwealth countries.

The U.K. reserves the right to submit proposals on this and other Articles according to the development of the discussion.

Doc No. 49

NETHERLANDS: Proposal

New Article

In the case of specific registration, other than national, of aircraft operated by an international operating agency, the Member States of such agency shall indicate which State or States shall be considered, for the purposes of this Convention, as being the State of registration.

CANADA: Proposals

Article 6, paragraph 2

Article 6, paragraph 2, should be amended to read as follows:

"If disembarkation takes place pursuant to paragraph 1 of this Article, the aircraft commander shall deliver the person concerned to the competent authorities of any Contracting State in the territory of which the aircraft lands, if he has reasonable grounds to believe that such person has committed on board the aircraft an act which, in his opinion, is an offence according to the penal laws of the State of registration of the aircraft."

Article 7, paragraph 2

Article 7, paragraph 2, should be amended to read as follows:

"The aircraft commander shall transmit to the authorities to whom any suspected offender is delivered pursuant to the provisions of Article 6, paragraph 2, evidence and information which are in his possession."

CANADA: Proposal

Article 9.

Article 9 should be amended to read as follows:

"Neither the aircraft commander, another member of the crew, a passenger, the owner or operator of the aircraft nor the person on whose behalf the flight was performed, shall be liable to the person against whom measures or actions are taken in accordance with the provisions of this Convention, on account of such measures or actions."

Doc No. 52

CANADA: Proposal

Article 12

The following words should be added to the end of Article 12, paragraph 1:

" ... and existing extradition treaties between Contracting States shall be deemed to be amended accordingly."

Doc No. 53

NORWAY: Proposal

Article 6, paragraph 3, subparagraph (a)

Replace the present text with the following:

"the authorities at such point refuse to permit disembarkation of the person concerned;"

REPORT OF THE COMMITTEE ON THE RULES OF PROCEDURE OF THE CONFERENCE

1. The Committee on the Rules of Procedure of the Conference held two meetings, on Saturday 24 August and on Tuesday 27 August 1963. The Committee was composed of the following countries:

Argentina	Mr. R. J. Salas
Australia	Mr. K. S. Edmunds Mr. L. R. Edwards
Ceylon	Mr. S. S. Wijesinha
Congo (Brazzaville)	Mr. F. X. Ollassa
Greece	Mr. C. Hadjidimoulas Mr. N. Diamantopoulos
Polish People's Republic	Mr. T. Zebrowski
United Arab Republic	Mr. M. Abdel Razzek

The President of the Conference attended the meetings. In the first meeting, the Committee designated as its Chairman Mr. K. S. Edmunds, Chief Delegate of the Australian Delegation.

2. The Committee discussed the proposals for amendment to the draft provisions of the Rules of Procedure of the Conference, submitted by the different delegations in writing or by members of the Committee during the debates.

3. Proposal of the Polish People's Republic: The Delegate of the Polish People's Republic stated that, in relation to questions of substance, a simple majority was not enough and that it was preferable that motions be decided by a two-thirds majority as provided in the present procedure of the United Nations in other conferences under the auspices of that organization. However, as in ICAO it was traditional to carry a motion by a simple majority and accordingly a study of this question would delay the work of the Rules of Procedure Committee or of the Conference, he refrained from proposing the adoption of such a rule at the present time and suggested simply that the Conference refer to the Council a proposal that in future conferences a two-thirds majority of the votes cast in matters of substance should be required to carry a motion. The Committee agreed to report to the Conference accordingly.

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4. Amendment proposed by Guatemala (Document 15).

In a proposal dated 16 May 1965 Guatemala proposed that Rule 9, relating to the powers of the Presiding Officer, be amended to provide that the President prepare a written draft of decisions and announce such decisions after the approval of the final text of the draft. The Committee discussed the proposal at some length and adjourned its meeting to enable the Representative of Guatemala to amplify his proposals. At the adjourned hearing the Representative of Guatemala stated that his proposal was aimed at preventing any confusion as to the proposals put before Conference for decision or as to the final decision of Conference. After discussion the Committee decided not to make any amendment of the present rules but to recommend that the Presiding Officer of all meetings, before putting any motion to adopt or amend any article, should reduce any such motion to writing and read the motion to the Conference. Similarly when more than one amendment was made to any article the Presiding Officer should immediately after the taking of a vote on the last of the amendments read the whole article as amended.

5. Amendments proposed by the Republic of Congo (Brazzaville), (Doc 23).

The proposals presented by the Representative of Congo (Brazzaville) to the effect that

- 1) a person may represent more than one State at the Conference, but that such person should only have one vote
- and 2) the Conference might invite international organizations to attend its meetings,

were not seconded. The Committee, however, discussed the proposals fully. In relation to the first proposal it was felt that to permit any such proposal would be likely to reduce the overall numbers attending a meeting with the resulting loss of benefits that accrue from wide representation. In regard to the second proposal it was the view of the Committee that Conference could, if so minded, at the commencement of any meeting, invite any observers it saw fit.

6. Proposal of Switzerland (Doc 26).

The Committee considered a proposal submitted by the Delegation of Switzerland to the effect that Rule 14 of the Rules of Procedure should be amended to include the closure of the list of speakers among the procedural motions that the Conference might approve. The Committee understood the reason for this proposal. However, it was considered that it would put those desirous of speaking who had not had the opportunity to speak for varying reasons (one of them being that very often they could not catch the eye of the President due to the arrangement or disposition of the Meeting Room) at the disadvantage of those who were already on the

list, and that it would be preferable to leave the rule as drafted.

7. The proposal of France to the effect that the Rules of Procedure of the ICAO Assembly should apply as an additional measure in respect of matters not covered in the Rules of Procedure of the Conference was discussed by the Committee. The proposal having been moved and seconded was the subject of considerable discussion by members of the Committee who ultimately on the vote of the majority rejected the proposal.

8. The Committee considered a proposal made by the Secretary General of the Conference who stated that the position of the Secretariat of the Conference was not very clear if Rules 2 (1) and 8 were read together. There was a mention of the Secretary General in Rule 8, and strictly, the Secretary General was the Secretary General of ICAO. It would be in accordance with the practice of the Diplomatic Conferences to have a specific provision on the functions and position of the Secretary of the Conference. The Committee decided to recommend to the Conference:

- a) that in Rule 2 (1) in lieu of the word "Secretariat" insert the words "Secretary General";
- b) that a paragraph 3 be added to Rule 4 reading as follows:

"The Conference shall have a Secretary General who shall be the Secretary General of the International Civil Aviation Organization or his nominee."

Summary of Recommendations to the Conference

See paras. 3, 4, and 8 above.

Keith S. Edmunds
Chairman

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BELGIUM AND NETHERLANDS: ProposalNew Article

If Contracting States establish, or have established, joint air transport operating organizations or international operating agencies, and if aircraft operated by such organizations or agencies are not registered on a national basis, those States shall in an appropriate manner designate the State among them which, for the purposes of this Convention, shall be considered as being the State of registration.

Doc No. 56

REPUBLIC OF HAITI: Proposal

1. The Haitian Delegation is of the opinion that there is justification for making specific mention of the concept of attempted offences or acts in Articles 4, 5 and 6 of the draft Convention under discussion. This would make the text clearer and more precise.
2. If a psychological distinction is made between the different stages of an offence (decision to commit, preparation, commencement and execution or completion of the offence) it becomes an easy matter to decide to what extent imposition of the sentence should be conditioned by such completion.
3. All things considered, this exposition leads us to recommend that the classic terminology be used.
4. For this reason, the views expressed here will be revised as this particular point develops.

UNITED KINGDOM: Proposal

article 1 (1)

- 1) It is suggested that this provision, defining the scope of the Convention can be made much simpler if, in the first place, attention is focused on the principle to be adopted. In the view of this delegation that principle is that it is desirable for the Convention to have the widest possible application with only such safeguards as are necessary to ensure that the Convention does not regulate the treatment to be accorded by a State to aircraft on its own register.
- 2) The enumeration of points between which the aircraft is flying, or at which it may be, has not only proved complicated and difficult to understand, but it unnecessarily restricts the application of the Convention, and in some cases interferes with the right of each State to accord to its own aircraft such treatment as it thinks fit, as will appear from the examples which follow.
- 3) The enumeration is inspired by the conception of international carriage in the Warsaw Convention, which is a Convention dealing with matters of private law, but it is not appropriate in a Convention dealing mainly with public law.
- 4) In order to test the merits of the approach suggested in this paper, it is necessary to test the effects of Article 1 (1) by applying it separately to each Article of the Convention.
- 5) The substantive Articles of the Convention may be divided into three groups: -

Articles 2 and 3: Jurisdiction

Articles 4 to 11: Restraint, disembarkation and other measures immediately following the offence or other act.

Article 12: Extradition.

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- 6) Articles 2 and 3, it is submitted, should apply wherever the aircraft may have been, and whatever the points between which it may have been flying, at the time of the offence or other act.

Articles 4 - 11 can apply to all aircraft anywhere. The only limitation necessary is that they should not affect the treatment to be accorded by a State to an aircraft registered in that State or to persons on board, whatever the nationality of those persons and whatever the position of the aircraft or the points between which it was flying at the time of the offence or other act.

Example A: A British aircraft flies from a foreign country to the United Kingdom. There is no need for the Convention to regulate the treatment to be accorded by British law to that British aircraft or to persons on board, though the Convention should apply to all treatment accorded by foreign law.

Example B: A British aircraft is ditched outside British territorial waters. In escaping, a passenger commits an offence. If the rescued passengers are taken to a British port, the Convention should not regulate their treatment by the British authorities, as it would do under the existing draft. If they are taken to a foreign port, the Convention is necessary for regulating the treatment accorded by foreign law to the British aircraft or persons on board.

Example C: A Pakistani aircraft flies from East to West Pakistan, and a passenger threatens the safety of the aircraft while it is still over East Pakistan. The commander should be allowed to restrain the passenger during the passage over India, without the risk of liability for false imprisonment if subsequently sued in the Indian courts, but under Article 1 (1) as drafted the Convention will not apply, because application depends upon the situation of the aircraft at the time of the offence or act.

Article 12 (Extradition) should apply wherever the aircraft may have been and whatever the points between which it was flying, at the time of the offence.

Example: An American passenger commits an extraditable offence over the high seas in the course of a flight between Hawaii and California. He then escapes to Canada. Article 12 should apply, but under Article 1 (1) as drafted it will not.

Conclusion

7) Article 1 (1) should read

"This Convention shall apply in respect of -

1) (as before)

2) (as before)

when such offences are committed or such acts are done by a person on board any aircraft registered in a Contracting State, while that aircraft is in flight. Nevertheless, Articles 4 to 11 of this Convention shall not affect the law to be applied by any State to any aircraft registered in that State or to persons on board such an aircraft."

Doc No. 58

AUSTRIA: Proposal

Article 3

The following wording is proposed:

"The provisions of paragraph 1 of this article shall not apply if the person is a national or a permanent resident of the second State or if the act constituted an offence against the national security or other important interests of such State, and its laws permit further trial, or if the final judgement mentioned in paragraph 1 of this article is incompatible with the basic principles of the law of the second State."

UNITED STATES OF AMERICA: ProposalNew Paragraph in Article 6

1. " Measures of restraint pursuant to Article 5 shall not be imposed or re-imposed beyond any point of departure in a Contracting State if the act was committed, or was about to be committed, before departure from such point and the circumstances were brought to the attention of the police authorities at such point."
2. The purpose of this paragraph is to eliminate the possibility that a passenger will be subjected more than once to restraint and disembarkation for the same alleged offence or act. If an alleged offence or act jeopardizing safety has been brought to the attention of the police authorities of a Contracting State during an intermediate stop of the aircraft (or prior to departure of the aircraft in cases in which the flight originates at that point), the decision of such authorities should be final. The aircraft commander should not thereafter be permitted to ignore or overrule the determination of the police authorities by imposing restraint on the passenger, and also later disembarking and delivering the passenger pursuant to Article 6, paragraphs 1 and 2. Of course, if a new offence or act jeopardizing safety occurs, the aircraft commander will be free to impose appropriate new or renewed measures of restraint.
3. This proposal to add a new paragraph to Article 6 is intended to supersede the proposal made by the United States with respect to Article 1, paragraph 1, subparagraphs (a) through (d). The purpose of the original proposal is described in Doc No. 9, paragraph 4.

New Paragraph in Article 10

4. " Each Contracting State shall at all times accord to any person disembarked in its territory pursuant to Article 6, paragraph 1, or delivered to its authorities pursuant to Article 6, paragraph 2, treatment which is no less favourable for the protection and security of this person than that accorded nationals of such Contracting State in like circumstances."

5. The purpose of this paragraph is to guarantee that any person who is subjected to any type of investigation or placed under any type of custody in a Contracting State is granted the same protection of his rights and immunities as nationals of such Contracting State. We propose that this be done through a clause commonly called a "national treatment clause", which is found in many bilateral treaties of friendship, commerce, and navigation already executed between many nations present here.

New Paragraph in Article 12

6. " This Convention shall not apply to offences against those penal laws defining crimes of a political, racial or religious nature, except to the extent that such offences constitute an act or acts within the meaning of Article 1, paragraph 1(2)."

7. The purpose of this paragraph is to avoid any possibility that the Convention apply aboard aircraft within the territory of States other than the State of registration of penal laws which are of a political, racial or religious nature. Such laws are often contrary to the customs and policies of other States and should accordingly not be given international recognition under this Convention beyond the territory of the particular enacting State. Passengers aboard aircraft should not be subject to laws of this type simply because of the fortuitous circumstance that they happened to board a particular aircraft. This is especially true when they board the aircraft outside the State of registration.

FEDERAL REPUBLIC OF GERMANY: Proposal

Article 5, paragraph 2

Delete in the first sentence, second line, the words:

" ... may request or authorize, but not require, the assistance ..."

JAPAN: Proposal

Article 6, paragraph 3 (a)

Replace the present text with the following:

"(a) such point is in the territory of a non-contracting State."

Reason: See Doc. No. 10, para. 2.

Doc No. 62

NORWAY: Proposal

Article 9

The present text should be paragraph 1.

Add a new paragraph 2 reading:

" Nothing in this Article shall affect the liability of the owner or operator of the aircraft for loss or damage sustained by others than the person who committed the offence or act involved."

SWEDEN: Proposal

Article 12

1. Offences committed on aircraft registered in a Contracting State shall be treated, for the purpose of extradition treaties, as if they had been committed not only in the State in which they may have occurred, but also in the territory of the State of registration of the aircraft.

2. Nothing in this Convention shall be deemed to create an obligation to grant extradition.

Reasons:

Ad para. 1. Generally a State is unwilling to extradite an offender, who has committed an offence in its territory, but if the offence was committed on board a foreign aircraft extradition might take place. It will seem advisable to leave, in such a case, to the State overflown to decide whether it will grant extradition or not, without any special recommendation by the Convention. The word "also" alone does not seem to take care of the case in a clear manner.

Ad para. 2. There has hitherto been agreed as a general rule that the Convention must not be allowed to interfere with the partly rather frail system of extradition. Paragraph 1 is intended to assist in the interpretation of provisions concerning extradition and also to encourage extradition, but it does not alter or set aside the general rule. Consequently, the proviso at the beginning of the paragraph should be deleted.

Doc No. 64*

JAPAN: Proposal

Article 6, paragraph 3(a)

- (a) such point is in the territory of a non-contracting State and its authorities refuse to permit disembarkation of the person concerned at such point or undue delay of the aircraft is reasonably foreseen as a consequence of such disembarkation;

* Revision of Doc No. 61.

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REPORT OF THE WORKING GROUP ON ARTICLE 1, PARAGRAPH 1, SUBPARAGRAPHS a) TO d)

1. The Group was composed of Representatives of the following countries: Belgium, Spain, Sweden, Switzerland and the United States of America, and its terms of reference were to: "examine the subject dealt with in clauses (a) - (d) of Article 1, paragraph 1, and, taking into account all aspects of the subject, including the Belgian, Swedish and United States of America proposals in Docs Nos. 22, 25 and 9, and all other suggestions made during this debate, to submit a report and if possible a revised text on the subject,"* In addition to the proposals mentioned in its terms of reference, the Group considered the proposal of the Netherlands (Doc 39) and other documents that had been submitted to it, by the United Kingdom among others (Doc 57).
2. The Working Group held five meetings under the chairmanship of Mr. W. Guldemann (Switzerland).
3. Several members of the Group pointed out the advantages of the principle of defining the scope of the Convention in the manner suggested by several Representatives during the discussion of Article 1 and also in the above-mentioned paper presented by the United Kingdom: i.e. there should not be a listing of the flights covered thereunder, but rather, of those which would fall outside its general scope. Nevertheless, the Group considered unanimously that the new text which it was proposing for subparagraphs a) to d) was satisfactory, and that at this stage of the work on the draft convention, a change in the method of dealing with the geographical application of the Convention should only be considered if it would avoid great disadvantages embodied in the Rome draft — which did not appear to be the case.
4. The Working Group compared the Belgian and Swedish proposals with subparagraphs a) to d) of the Rome draft and then decided to work on the basis of the Belgian proposal (Doc 22), the text of which appears at Annex I. The Belgian text followed the same principle as the Rome draft but defined the scope of the Convention more clearly. Moreover, the text proposed by the Belgian Delegation went further than the Rome draft, in that in subparagraphs b) and c) the word "State" was used instead of the term "Contracting State". The Working Group considered this to be very valuable because, under the Belgian proposal, the Convention would also be applicable in respect of flights commencing in the State of registration of the aircraft and making intermediate stops first in that State and then in a non-contracting State, when an offence or act had been committed over the territory of the State of registration prior to the last stop in that State, and the offender was on board at the time of the intermediate stop in the non-contracting State.

* The United States proposal contained in Doc 9 has been withdrawn and Doc 59 to be submitted to the Conference.

4.1 a) The Working Group noted that the text proposed by the Belgian Delegation did not refer to flights to the State of registration when an offence or act had been committed over the territory of that State, whether the point of departure was situated in another Contracting State or in a non-contracting State. The Rome draft did cover such a case. If the Conference wishes the Convention to apply in respect of such flights, the text appearing in Annex II should be adopted.

b) Furthermore, the text proposed by the Belgian Delegation made no mention of flights leaving the State of registration for another State, when an offence or act had been committed over the State of registration and the aircraft landed in that State before crossing the border. The criterion adopted in the Belgian proposal was the point of arrival and not the point of destination. Although the Rome draft was not clear on this point, it would probably apply. If the Conference is of the opinion that this should fall within the scope of the Convention, the text appearing in Annex III should be adopted.

c) Lastly, the Working Group noted that neither the Belgian proposal nor the Rome draft covered flights between two points in the territory of the State of registration, if the aircraft overflew another State after an offence or act had been committed over the territory of the State of registration. If the Conference wishes the Convention to be applicable in those circumstances, the text appearing in Annex IV should be adopted.

5. None of the texts considered by the Working Group made any mention of a situation where it could not be ascertained in whose territory the aircraft had happened to be at the moment the offence was committed. After considering this problem the Group came to the conclusion that the Convention should not contain any provisions relating to offences or acts that had been committed in unidentified airspace because such cases raised issues of fact which could not be settled by a conventional provision.

Chairman of the Working Group
W. Guldemann

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ANNEX I(Text of the Belgian Proposal Doc 22⁽¹⁾)

- "(a) In flight in the airspace of a State other than the State of registration; or
- (b) In flight in the airspace of the State of registration if the aircraft thereafter lands in another State⁽¹⁾ with the said person still on board; or
- (c) In flight over the high seas or any other area outside the territory of a State unless the point of departure and the point of arrival of the flight are in the State of registration of the aircraft. In the latter case, however, the Convention shall still apply if the aircraft lands in another State with the said person still on board;
- (d) On the surface of the high seas or any other area outside the territory of any State."

⁽¹⁾ The words underlined in subparagraph (b) are a more accurate translation of the original French text than those appearing in Doc 22.

ANNEX IINew Text of Subparagraph (b) (paragraph 4.1 a)) of the Report

- "(b) In flight in the airspace of the State of registration if the point of departure is situated in another State or if the aircraft thereafter lands in another State with the said person still on board."
-

ANNEX III

New Text of Subparagraphs (b) and (c) (para. 4.1 b) of the Report)

- "(b) in flight in the airspace of the State of registration if the point of destination is situated in another State or if the aircraft thereafter lands in another State with the said person still on board; or
- (c) in flight over the high seas or any other area outside the territory of any State unless the point of departure and the point of destination of the flight are situated in the State of registration of the aircraft. In the latter case, however, the Convention shall still apply if the aircraft lands in another State with the said person still on board."

Note: This text does not cover the case covered by the text of Annex II. The two texts could easily be combined however.

ANNEX IV

Amendment to Subparagraph b) of Annex I (para.4.1 c) of the Report)

Insert the words "overflies or" after the words "if the aircraft thereafter".

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PREAMBLE TO THE DRAFT CONVENTION

(Presented by the Secretariat)

As desired by the Committee on Final Clauses, the Secretariat presents below three alternative suggestions A, B and C as to the Preamble to the draft Convention, together with brief comments.

Action

The suggestions are for consideration by the Committee.

DRAFT PREAMBLEA

"The States Parties to this Convention

HAVE AGREED as follows:"

Comment: This simple formula was used in the Convention on the Territorial Sea and the Contiguous Zone (Geneva, April 1958).

B

"The States Parties to this Convention

DESIRING to establish international rules with respect to
penal offences and certain other acts if committed
on board civil aircraft

HAVE AGREED as follows:"

Comment: This formula will simply reflect the existing title of the draft Convention except for the word "civil" before the word "aircraft".

C

"The States Parties to this Convention

DESIRING to establish international rules concerning
extraterritorial criminal jurisdiction of States
with respect to penal offences committed on
board aircraft of their nationality

AND CONSIDERING that it is desirable to establish the legal authority of the commanders of such aircraft and other persons to take measures for ensuring the safety of the aircraft and of persons and things on board and of maintaining good order and discipline on board

HAVE AGREED as follows:"

- Comments: (1) The word "extraterritorial" relates to the basic intention of the provision of Article 2, paragraph 1, of the draft Convention which reads: "The State of registration of the aircraft is competent to exercise jurisdiction over offences committed on board aircraft." However, paragraph 3 of Article 2 deals with cases of application of territorial jurisdiction. On the other hand, the powers of the aircraft commander in Articles 5, 6 et seq relate primarily to the situation where the aircraft is outside its national territory at the time the offence is committed or the offender on board is to be proceeded against.
- (2) With respect to the words "aircraft of their nationality" it will be noted that in some cases a State which is not the State of nationality of the aircraft, for example, a State whose national has possession of the aircraft as a lessee, might extend its criminal jurisdiction over that aircraft. However, a Preamble does not necessarily have to contain a complete description of all the detailed contents of the Convention, and if the word "extraterritorial" were retained, then it might be appropriate to retain also the words "of their nationality".
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AUSTRIA: Proposal

Article 10, paragraph 5

It is proposed to insert the words "or retained" after the word "detained".

Reasons: The present wording does not take into account that the disembarked person, while not arrested, might be ordered by the court to be at the court's disposal during investigation. The insertion of the words "or retained" would cover this case.

Doc No. 68

AUSTRIA: Proposal

Article 10, paragraph 6

The following wording is proposed:

"Without prejudice to the preceding paragraph, the State in whose territory a person has been disembarked pursuant to Article 6, paragraph 1, may, if that person is not a national of that State, deport that person to the territory of the State of which he is a national, or, if there is no such State, to the territory of the State in which he began his journey by air, and the latter State shall accept that person."

Doc No. 69

FRANCE: Proposal

The French Delegation proposes:

- a) the deletion of Article 9;
- b) failing that, the amendment of that Article to read as follows:

"Unless he is proved to have been at fault, neither the aircraft commander ... etc., shall be⁽¹⁾ liable for damages⁽¹⁾ on account of (remainder unchanged).

⁽¹⁾ This is a faulty translation in English: Insert the word "civilly" before "liable" and delete the words "for damages".

1
PAKISTAN: Proposals

ARTICLE 1

According to sub-Article (3) of Article 1, a military aircraft, if engaged in the carriage of passengers, cargo or mail for remuneration shall be subject to this Convention.

In this connection, the provision that "the State of registration of the aircraft is competent to exercise jurisdiction over offences on board aircraft" will amount to conflict of sovereignty. Further, the provision remains vague in as much as the competent State may or may not exercise jurisdiction since it is not made obligatory on its part to do so. In our opinion, this question should not be left vague but a system of priority be established in order to determine the jurisdiction in such a case.

ARTICLES 2 & 3

(i) Article 2 describes what are offences and which of them are punishable by the penal laws of a Contracting State competent in accordance with Article 3. But there is no uniform description of offences, which may change from one Contracting State to the other.

1 These comments are in the text of the Munich draft Convention on Offences and Certain Other Acts Occurring on Board Aircraft, the text being found in Doc 8111-LC/146-2 Legal Committee Twelfth Session Munich 18 August - 4 September 1959, Volume II (Documents), pp. 1-4 or Doc 8302-LC/150-2 Legal Committee Fourteenth Session Rome 28 August - 15 September 1962, Volume II (Documents), pp. 1-7.

(ii) Article 3 refers to the State of registration. But, it loses sight of the fact that according to the Pakistan Penal Code, British subjects domiciled in Pakistan and others will be liable for any offence under the Code committed by them anywhere outside Pakistan. Also the Penal Code applies to any person in any aircraft registered in Pakistan committing an offence under the code. These articles 2 and 3 have lost sight of this provision.

ARTICLE 4

Since the Convention does not propose to solve the question of conflict of criminal jurisdiction, the provisions of Article 4, in its ultimate effect, may it is expected, result in an end of that conflict.

ARTICLE 5

The terminology "whether offences or not" is wide enough to include all sorts of acts which may jeopardize the safety of the aircraft or person or property or order and discipline. The provisions of this Article are comprehensive and very much desirable. Our Criminal Procedure Code does not provide for any power to aircraft commander, except that of any private person, only for non-bailable and cognizable offences which is not sufficient to cope with the duties and responsibilities as envisaged in Article 5.

The provisions of Article 5 leave it to the discretion of the commander for consideration whether:

- (1) a particular act would endanger the safety of the aircraft or persons or property therein or interfere with good order and discipline on board,
- (2) What measure of restraint would be necessary. Further the wording "may impose" means that commander may or may not impose restrictions. Although powers are given to the commander yet he is not required to exercise them under the Convention. It may, therefore, happen that in a serious case, the commander may abstain from taking positive action. The commander is also protected under the Convention against any litigation or liability.

In view of the above comments, it is hoped that necessary provision would be made in the Convention that the aircraft commander shall impose upon such person reasonable measures as may be necessary for the purposes enumerated in clauses (a), (b) and (c) of paragraph 1 of Article 5.

ARTICLE 6

In regard to the responsibility of the aircraft commander under Article 6 of the Convention, it is stated that Section 59 of the Criminal Procedure Code of Pakistan empowers any private person to arrest and detain and deliver the offender to the nearest police station. This may however be done within the territorial jurisdiction of Pakistan. Hence our National Law falls short of the requirement under Article 6 of the Convention.

ARTICLE 7

The provisions of Article 7 are necessary and desirable. There are no national regulations corresponding to the provisions of Article 7.

ARTICLE 8

The provisions of Article 8 are necessary. There are no national regulations corresponding to the provisions of Article 8.

ARTICLE 9

Article 9 takes into consideration the acts of the commander and other members of the crew, etc., which are reasonable.

ARTICLE 10

The provision that the State having the custody of the offender may not wish to exercise its jurisdiction over him is a dangerous provision. There is no provision in the Convention by which the State taking custody of the offender is obliged to take subsequent action except notifying to the other State concerned.

ARTICLE 11

The provisions of Article 11 are satisfactory and desirable. As there may be no extradition treaty with all the States acceding to the Convention the provision as to the extradition will create difficulties. Pakistan would, therefore, reserve her right to examine each case of extradition on its merit, depending whether there is, or is not, an extradition treaty with the particular State.

On the perusal of the final draft, it is apparent that Pakistan's comments on the provisional draft forwarded to I.C.A.O. were not incorporated in it. The main question which arose from the comments of States and international organizations vis-à-vis Pakistan's comments are indicated below:

(a) Scope of the Convention

During the course of the 14th Session of the Legal Committee, a proposal was made to the effect that the scope of the convention should be reduced so as to exclude the treatment of problems relating to offences per se committed on board, and to deal only with such acts, whether or not they constituted an offence, as were prejudicial to the safety of the aircraft or persons or property thereon or to good order and discipline on board. It was argued in support of the proposal that a convention limited to such prejudicial acts committed on board and to the powers of the aircraft commander with respect to such acts would correspond more closely to the objectives of ICAO, specifically, safety of air navigation. The proposal was opposed on the ground, inter alia, that there was a need for the establishment on an international basis, of rules concerning offences committed on board aircraft and a need also for the unification of national rules on the subject. We, however, think that the offences should not be limited to acts, prejudicial to the safety of the aircraft, because our Penal Code applies to persons travelling in an aircraft registered in Pakistan. We are also of the view that there is a need for an international agreement on the subject of offences committed on board the aircraft. The disparity in the provisions of various national laws should be removed.

(b) Jurisdiction

Article 2, paragraph 4, of the draft convention states: "This article does not supersede any basis for criminal jurisdiction which a State might have incorporated into its national laws". Therefore, it is possible that more than one State might have, and claim jurisdiction over a given offence committed on board aircraft. With a view to avoiding or solving consequent problems of conflict of criminal jurisdiction, a proposal was made to the effect that the convention should establish an order of priority as between the jurisdictions of different States. The Committee of ICAO after discussion rejected the proposal. Our views are that a Convention without a system of priority could do nothing but increase the disorder of jurisdiction established in domestic law by adding some other internationally recognized jurisdiction thereby multiplying the possibilities of conflict.

(c) Powers of the Aircraft Commander

The powers of the aircraft commander include those of taking reasonable measures, including restraint, which are necessary to protect the safety of the aircraft or persons or property thereon or to maintain good order and discipline on board (Article 5). They include also the power to disembark in the territory of any State in which the aircraft lands, any person who is believed by the aircraft commander on reasonable grounds to have committed or to be about to commit a dangerous act of the kind under consideration (Article 6, paragraph 1). The aircraft commander is also empowered to deliver to the authorities of a Contracting State where the aircraft lands the person whom he has placed under restraint if he has reasonable grounds to believe that such person has committed a serious offence according to the law of the State of registration of the aircraft (Article 6, paragraph 2).

It will be noted that the powers of the aircraft commander may be exercised only when his belief as to the commission, actual or anticipated, of the act concerned is based on reasonable grounds; also the measures imposed must be reasonable, and they must be necessary for protecting the safety of the aircraft or persons or property on board or for maintaining good order and discipline on board. Furthermore, measures of restraint imposed upon a person cannot be continued beyond the point where the aircraft lands except in the special cases specified in Article 6, paragraph 3, of the draft convention.

The convention specifies the duties of the aircraft commander towards the authorities of the State in whose territory he disembarks any person or delivers a suspected offender pursuant to his powers under paragraphs 1 and 2 of Article 6. In the former case he has to notify the authorities of that State of the fact of such disembarkation and the reasons for the action (Article 7, paragraph 1). In the latter case he must transmit to the authorities to whom he delivers the suspected offender, such evidence and information as, in accordance with the law of the State of registration of the aircraft, are lawfully in his possession (Article 7, paragraph 2). If the aircraft commander has placed a person on board under restraint he must, as soon as practicable, and if possible before landing, inform the authorities of the State of landing of the fact of such restraint and the reasons thereof (Article 8). In this connection it is stated that Section 59 of the Criminal Procedure Code of Pakistan empowers any private person to arrest and detain and deliver the offender to the nearest police station. This can, however, be done within the territorial jurisdiction of Pakistan. Hence our national law falls short of the requirement under Article 6 of the Convention and similarly there are no national regulations corresponding to Articles 7 and 8 of the Convention.

DECISIONS TAKEN BY THE CONFERENCE IN RESPECT
OF THE ROME DRAFT CONVENTION
DURING THE FIRST NINETEEN MEETINGS
OF THE CONFERENCE

(Not reproduced)

Doc No. 72

CEYLON: Proposal

Article 10, paragraph 3

Delete the word "establish" in line 3 and replace it with the word "ascertain".

Doc No. 73

DRAFT FINAL ACT

(Presented by the Secretariat)

(Not reproduced)

TEXT PREPARED BY THE DRAFTING COMMITTEE
FOR THE SECOND READING (1)

Chapter I - Scope of the Convention

Article 1 (Ex-Article 1)

1. This Convention shall apply in respect of:
 - a) offences against penal law;
 - b) acts which, whether or not they are an offence, may or do jeopardize the safety of the aircraft or persons or property therein or which jeopardize good order and discipline on board.
2. Except as provided in ..., this Convention shall apply only in respect of offences committed or acts done by a person on board any aircraft registered in a Contracting State, while that aircraft is in flight or on the surface of the high seas or of any other area outside the territory of any State.
3. For the purposes of this Convention, an aircraft is considered to be in flight from the moment when power is applied for the purpose of take-off until the moment when the landing run ends.
4. This Convention shall not apply to military, customs or police aircraft / to aircraft used in military, customs or police services /.

Article 2 (New Article 2)

Article concerning offences against those penal laws defining crimes of a political, racial or religious nature. Text not yet prepared.

(1) The text of the articles prepared by the Drafting Committee for the second reading are to be found as follows: Articles 1, 3, 4, 5, 6, 7, 8, 10 (Doc No. 74); Article 9 (Doc No. 78); Article 4A(1) (Doc No. 80); Alternative version of Article 4A(1) (Doc No. 84); Articles 11, 12 (Doc No. 81); Article 2 (Doc No. 83); and Article 4A(2) (Doc No. 85).

Chapter II - JurisdictionArticle 3 (Ex-Article 2)

1. The State of registration of the aircraft is competent to exercise jurisdiction over offences committed on board.
2. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction as the State of registration over offences committed on board aircraft registered in such State.
3. This Article does not exclude any criminal jurisdiction which may be exercised in accordance with national law.

Article 4 (Ex-Article 2(3))

A Contracting State which is not the State of registration of the aircraft may not interfere with an aircraft in flight in order to exercise its criminal jurisdiction over an offence committed on board except in the following cases:

- a) the offence has effect on the territory of such State;
- b) the offence has been committed by or against a national of, or permanent resident of, such State;
- c) the offence is against the security of such State;
- d) the offence consists of a breach of any rules or regulations relating to the flight or manoeuvre of aircraft in force in such State;
- e) the exercise of jurisdiction is necessary to ensure the observance of any obligation of such State under a multilateral international agreement.

Chapter III - Powers of the Aircraft Commander and Other Persons

Article 5 (Ex-Article 5)*

1. When the aircraft commander has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an act or offence contemplated in Article 1, paragraph 1, the aircraft commander may impose upon such person reasonable measures including restraint which are necessary:

- a) to protect the safety of the aircraft, or persons or property therein; or
- b) to maintain good order and discipline on board; or
- c) to enable him to deliver such person to competent authorities in the circumstances contemplated in Article 8, paragraph 1.

2. The aircraft commander may require or authorize the assistance of other crew members and may request or authorize, but not require, the assistance of passengers to restrain any person whom he is entitled to restrain. Any crew member or passenger may also take reasonable preventive measures without such authorization when he has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft, or persons or property therein.

3.** The powers conferred by this Article on the aircraft commander, other crew members and passengers as well as those conferred on the aircraft commander by Articles 6, 7 and 8 may be exercised with respect to an act or offence contemplated in Article 1, paragraph 1, when committed at any time from the moment when all the external doors of the aircraft are closed for embarkation until the moment when any such door is opened for disembarkation. In the case of a forced landing outside an airport, such powers of the aircraft commander, crew members and passengers shall continue as to acts committed on board until competent authorities of the State of landing take over the responsibility for the aircraft, persons and property on board.

* The Conference has not yet (4 September 1963) taken a decision in regard to the application of the geographical scope of the Convention in so far as concerns Article 5. Therefore, the Drafting Committee has not found it possible to prepare any text on this point.

** When it discusses the question of the geographical scope of the Convention, the Conference may wish to take a decision in regard to the question of the relationship between such scope and the closed-door period found in this paragraph.

Article 6 (Ex-article 6(3))

1. Measures of restraint imposed upon a person pursuant to Article 5 shall not be continued beyond any point at which the aircraft lands unless:

- a) such point is in the territory of a non-Contracting State and its authorities refuse to permit disembarkation of the person concerned at such point;
- b) the aircraft makes a forced landing outside an airport and the aircraft commander is unable to deliver the person concerned to competent authorities; or
- c) such person agrees to onward carriage under restraint.

(Ex-Article 8)

2. The aircraft commander shall as soon as practicable, and if possible before landing in the territory of a State with a person on board who has been placed under restraint in accordance with the provisions of Article 5, notify the authorities of such State of the fact that a person on board is under restraint and of the reasons for such restraint.

Article 7 (Ex-Article 6(1))

1. The aircraft commander may, in so far as it is necessary for the purposes of subparagraph a) or b) of paragraph 1 of Article 5, disembark in the territory of any State in which the aircraft lands any person who he has reasonable grounds to believe has committed, or is about to commit, on board the aircraft an act contemplated in Article 1, paragraph 1, b).

(Ex-Article 7(1))

2. The aircraft commander shall report to the authorities of the State in which he disembarks any person pursuant to this Article, the fact of, and the reasons for, such disembarkation.

Article 8 (Ex-Article 6(2))

1. The aircraft commander may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person who he has reasonable grounds to believe has committed on board the aircraft an act which, in his opinion, is a serious offence.

(Ex-Article 7(2))

2. The aircraft commander shall furnish the authorities to whom any suspected offender is delivered pursuant to the provisions of this Article with evidence and information which, in accordance with the law of the State of registration of the aircraft, are lawfully in his possession.

Article 9 (Ex-Article 9)

Text not yet prepared by Drafting Committee.

Chapter IV - Unlawful Seizure of Aircraft

Article 10 (Ex-Article 4)

1. When there has been committed by violence ¹ or threat thereof ¹ or menaces ² or any other means ³ an act of interference, seizure, or other wrongful exercise of control of an aircraft in flight or when there are reasonable grounds to believe that such an act is about to be committed, 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.

Note: The Drafting Committee expresses no preference, but draws the attention of the Conference to the three possibilities, so that it may decide the question of substance.

¹ Includes only the threat of violence. The Drafting Committee calls attention to the fact that there is doubt whether, in some legal systems, "violence" includes the administration of drugs.

² Includes all threats or menaces, whether of violence or other action.

³ Includes all means.

2. In the cases contemplated in paragraph 1 of this Article, the Contracting State in which the aircraft lands shall permit its passengers and crew to continue their journey as soon as practicable, and shall return the aircraft and its cargo to the persons lawfully entitled to possession.

JAPAN: Proposal

Article 6, paragraph 1

The following new subparagraph should be added as a) bis:

" such point is in the territory of a non-Contracting State and measures of restraint are imposed pursuant to Article 5, paragraph 1 c); "

Article 8

The following new paragraph should be added as para. 1 bis:

" The aircraft commander shall as soon as practicable, and if possible before landing in the territory of a State with a person on board whom the aircraft commander intends to deliver pursuant to the preceding paragraph, notify the authorities of such State of his intention to deliver such person and the reasons thereof."

REPUBLIC OF MALI: Comments

ARTICLE 1 -

Having read this Article, Mr. Maiga sums it up as establishing the territorial application of the draft Convention and the concept of periods of application.

ARTICLE 2 -

Paragraph 2 a) no difficulty with the interpreting of this paragraph.

b) Mr. Maiga would stress that here again there is no difficulty if the aircraft is registered.

No reservation is made with respect to the other paragraphs.

ARTICLE 3 -

Mr. Maiga quotes the aviation authorities' right of control which can be exercised independently.

Mr. Seye states that in the case of a person who has committed an offence and been convicted by the authorities of a State other than the State of registration of the aircraft, there is no reason to impose a new conviction or an additional conviction on the accused, unless a new offence is committed after the first conviction.

ARTICLE 4 -

This Article is retained in its entirety.

ARTICLE 5 -

Mr. Maiga points out that if the attempted offence occurs at the moment of embarkation, it may also be the responsibility of the security authorities at the place of embarkation to take action.

ARTICLE 6 -

This Article received particular attention, and we agree with the proposal of the Director of the Security Office that paragraph 1 should be retained but paragraph 2 deleted.

In this manner the powers of the aircraft commander could usefully be limited in case his allegation of a person's guilt might be liable to stem from an unjustified interpretation e.g. a political opinion or comment, or merely because of the political regime in his country.

ARTICLE 7 -

Paragraph 1 - agree to this paragraph subject to the addition of "provided that the evidence and information are lawfully in his possession" to the remainder of the text.

Paragraph 2 - should be deleted as a result of Article VI, paragraph 2.

ARTICLE 8 -

To be retained.

ARTICLE 9 -

The Representative of the Ministry of Justice has the following comment to make on this Article:

"The purpose of Article 9 is to allow the accused upon release to claim damages from the airline. This does not extend to other passengers of the aircraft who may have complaints to make about any possible inconvenience to which they were subjected while travelling.

ARTICLE 10-

Paragraph 1 - We have read this paragraph and are in favour of it. Mr. Maiga would recall that all the time spent within the aircraft is considered to be spent in the State of registration of the aircraft; nevertheless, the rules of the State overflowed should be respected.

Paragraphs 2, 3 and 4 - should be deleted because they disregard paragraph 2 of Article VI.

Paragraphs 5, 6 and 7 - are supported by the members of the meeting.

ARTICLE 11 -

No comment.

ARTICLE 12 -

No comment.

REPORT OF THE COMMITTEE ON ARTICLE 10

The Committee met on 3, 5 and 6 September 1963, and considered the following documents: 9 (United States of America), 10 (Japan), 14 and 28 (Switzerland), 17, 67, 68 (Austria), 24 (France), 48 (United Kingdom), 72 (Ceylon).

1. The Committee considered the structure of the Article as presented in the Rome draft (Doc 1) and the Swiss draft text (Doc 28). The Committee considered that, basically, the arrangement proposed by Doc 28 was logical and preferable to that of Doc 1. It recommends it to the Conference with one modification viz: the insertion of Article 10 (5) of the Rome draft to a new Article (10 quater), which appeared desirable after discussion of this text as a whole. The Drafting Committee will decide on the final numbering of the Articles. As will be shown later, the difference between Doc 28 and Doc 1 is not only a difference of arrangement. There are also differences of substance.
2. Article 10 (1) of the Rome draft remains as Article 10 in the suggested rearrangement. No amendment is recommended.
3. Article 10 (2) and (3) of the Rome draft appear in Article 10 bis with some changes. The Committee agreed, in principle, with a proposal made by the Netherlands Delegation, that the text should be supplemented by a provision establishing the obligation of the landing State to accept delivery by the aircraft commander of a person whom he seeks to deliver in accordance with Article 6 (2). This appeared all the more necessary in view of the amendments made by the Conference to Article 6 (2).
4. The Committee was not, however, entirely in agreement as to the manner in which this point should be dealt with. The text submitted by the Netherlands Delegation itself consisted of a new paragraph to appear in Article 10 bis (Doc 28) as para. 1A. This text, combined with the former paras. 1 and 2 of Doc 28 - as amended by the Committee - appears as text A in the draft now submitted. As regards the second sentence of para. 1 - enclosed in brackets - a substantial minority of the Committee recommended its deletion as being superfluous and possibly embarrassing. The Conference should decide on this point. As regards para. 2 of Article 10 bis (Text A), the words "or take any other measures to ensure the presence at the investigation" were inserted in order to permit States to take measures (e.g. **impounding** passports, or taking security) short of actual custody to ensure the presence of the suspected person. This text A was favoured by certain members of the Committee.

5. Other members of the Committee, while agreeing with the principle of the Netherlands proposal, thought that the substance of it could be incorporated in paras. 2 and 3 of the Rome draft, with less disturbance to the latter than would be involved if the Swiss text were adopted. The text of these paragraphs, as so amended, and taking into account the amendments proposed, appears as Text B.

6. The main difference of substance between the texts is that Text A requires the State of landing first to decide whether there is a prima facie case of serious offence against its laws. If this is so, there is an obligation to accept delivery and to make a preliminary investigation in connection with which custody may be taken. Under Text B - as in the Rome draft - the State of landing has to accept delivery (or custody) if satisfied that the circumstances warrant this action - a more general and less precise condition which would enable the State to decide as a matter of policy whether the circumstances called for this action, instead of being obliged to act if there is a prima facie case of a serious offence under its laws.

Another difference relates to the manner in which hi-jacking cases are to be dealt with. The Committee was instructed to work the second and third sentences of Article 4 (1) into Article 10. In order to do this some expansion of the provisions now in Article 4 was obviously required. In Text A the matter is dealt with by requiring the State of landing at once to make a preliminary investigation, and to take custody of a suspected person. In Text B additions have been made which have the effect that the State is first put under an obligation to take custody of a suspected hi-jacker - upon being satisfied that the circumstances warrant such action - and then to make a preliminary investigation.

It may be (though not all members of the Committee would agree on this) that the working in practice of the two texts may not be very different.

7. Article 10 (2), second sentence, and the second part of Article 10 (3) of the Rome text reappear combined in Article 10 bis, para. 4. The Rome text has been amended so as to reduce the burden of the State of landing as to notification and report.

8. Article 10 (4) of the Rome text becomes Article 10 bis (4). The text has been amended so as to be expressed more generally and to avoid needless detail. A member of the Committee desired to include in this paragraph a definite time limit within which action must be taken by the detaining State, following the European Extradition Treaty. The Conference may be asked to consider this point.

9. Article 10 (5) of the Rome text becomes Article 10 ter (1). Certain Delegations are in favour of deleting the whole paragraph as an unnecessary and possibly embarrassing statement of international practice. Others consider it of great importance that some such provision should appear. Certain amendments have been made to the Rome text.

- a) The words "without prejudice to the preceding paragraph" have been replaced by a wider formula. Some Delegations, while preferring this formula to the existing reserve, consider that no words of reserve should appear.
- b) A reference is made to Article 4 (1).
- c) The words "if there is no such State" have been deleted.
- d) The words "those States being obliged to receive him" have been added. Some Delegations object to this addition.

10. Article 10 (7) of the Rome draft appears as Article 10 ter (2). The words "nor the return" have been added in order to reflect the procedure of some States to "return" persons rather than to deport. A saving has been added at the end of laws - relating to expulsion.

11. Article 10 (5) of the Rome draft appears as Article 10 quater (1). The paragraph does not, as one Delegation had suggested, make any reference to immigration laws, it being thought that this point is covered by the reference to Article 10 ter.

12. Article 10 quater (2) incorporates a proposal made by the United States of America as amended by the Committee.

The following appear to be the main points for decision by the Conference.

1. Does the Conference accept the rearrangement of Article 10 as suggested? The numbering of the new Articles will be decided by the Drafting Committee.
2. Should Text A or Text B, in principle, be adopted?
3. If Text A is adopted, should the words in brackets be included in Article 10 bis, para. 1?
4. Should a definite time limit be introduced into Article 10 bis (4)? This question will only arise if some Delegation wishes to submit a proposal to this effect.
5. Should Article 10 ter (1) be deleted?
6. If some such provision as in Article 10 ter (1) is to be retained:
 - a) Should the words relating to the power or wish of a person to continue his journey and the willingness of the State of landing to admit him be retained?

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- b) If not, should the expression "without prejudice to Article 10 (2)" (as in the Rome text) be inserted?
 - c) Should neither of the provisions referred to in a) or b) above be included?
 - d) Should the words "those States being obliged to receive him" be included?
7. Is Article 10 ter (2) acceptable?
8. Is Article 10 quater (2) acceptable?

Richard Wilberforce

Chairman

A N N E X

ARTICLE 10 (ROME DRAFT) AS AMENDED

Article 10

Rome 10(1) Any Contracting State shall allow the commander of an aircraft registered in another Contracting State to disembark any person pursuant to Article 6, paragraph 1.

Article 10 bis

Text A

Text B

1A. Any Contracting State shall permit the commander of an aircraft registered in another Contracting State to deliver a person pursuant to Article 6, paragraph 2, if the act of which he is accused constitutes prima facie a serious offence under its laws.

1. Any Contracting State in whose territory an aircraft lands following the commission of an act contemplated in Article 4, paragraph 1, or which accepts delivery of a person pursuant to the preceding paragraph has the obligation immediately to make a preliminary investigation in order to establish the facts.
[In the absence of any special provision, this investigation shall be governed by the rules of criminal proceedings of the said State.]

2. The State entrusted with the preliminary investigation pursuant to the preceding paragraph shall take custody of the person suspected of an act contemplated in Article 4 or Article 6, paragraph 2, or take any other measure to ensure his presence at the investigation, if the circumstances warrant such action and subject to its own laws.

1. Any Contracting State shall take delivery of any person whom the aircraft commander seeks to deliver pursuant to Article 6, paragraph 2, and shall take custody of such person and of any person suspected of an act contemplated in Article 4, paragraph 1, upon being satisfied that the circumstances warrant taking delivery of such person or taking such person into custody and the Contracting State assumes such obligation according to its regulations and laws.

2. The Contracting State which takes delivery or custody of a person pursuant to paragraph 1 of this Article shall immediately make a preliminary enquiry in order to determine the facts.

Common Text

- Rome 10(2) and (3) in part 3. Any State taking delivery shall promptly notify the State of registration of the aircraft and the State of nationality of the detained person and, if it considers it advisable, any other interested State of the fact that such person is in custody pursuant to the (preceding) paragraph and of the circumstances which warrant his detention. In addition, it shall promptly report to these same States the findings of the preliminary enquiry that has been opened pursuant to (paragraph) of this Article, and report whether it intends to exercise itself its jurisdiction.
- Rome 10(4) 4. A person may only be detained in accordance with the preceding provisions of this Article for such time as is reasonably necessary to enable any criminal or extradition proceedings to be instituted.

Article 10 ter

- Rome 10(6) 1. When any person who has been disembarked or delivered in accordance with Article 6 or has landed after committing an act contemplated in Article 4, paragraph 1, cannot or does not desire to continue his voyage, then, if the State of landing is not willing to admit him, that State may, if he is not a national or permanent resident of that State, return him to the territory of the State of which he is a national or permanent resident, or to the territory of the State in which he began his journey by air those States being obliged to receive him.
- Rome 10(7) 2. Neither disembarkation nor delivery, nor the return of the person concerned, shall be considered as admission to the territory of the State concerned for the purpose of the laws of the Contracting State relating to entry or admission, and nothing in this Convention shall affect the laws of a Contracting State relating to the expulsion of persons from its territory.

Article 10 quater

- Rome 10(5) 1. Without prejudice to Article 10 ter, any person who has been disembarked or delivered pursuant to Article 6 shall be at liberty as soon as practicable to continue his voyage to any destination of his choice unless such person is detained or retained in accordance with the laws of the State of landing for the purpose of extradition or criminal proceedings.
2. Except for the application of its laws pertaining to entry, admission, and expulsion of persons from its territory, a Contracting State in whose territory the person has landed after being suspected of having committed an act contemplated in Article 4, or has been disembarked or delivered in accordance with Article 6 shall accord to such person treatment which is no less favorable for the protection and security of this person than that accorded nationals of such Contracting State in like circumstances.

TEXT PREPARED BY THE DRAFTING COMMITTEE FOR THE SECOND READING

Article 9

For actions taken strictly in accordance with this Convention, neither the aircraft commander, any other member of the crew, any passenger, the owner or operator of the aircraft, nor the person on whose behalf the flight was performed shall be subject to any penal or administrative proceeding or be/ liable /in any civil proceeding/ to the person against whom the actions were taken /or to any other person who claims on the basis of any relationship* to him/.**

* Some Representatives preferred to describe the relationship as a legal relationship.

**Some Representatives of the Drafting Committee, including those of Congo (Brazzaville) and France, considered on reexamination that the American suggestion (to take into account that other persons acting on behalf of or closely connected with the guilty individual might bring actions - Twenty-first Meeting) was incompatible with the Canadian proposal (Doc 51) adopted by the Conference.

REPORT OF THE COMMITTEE ON FINAL CLAUSES

1. The Committee was composed of Representatives of the following countries: Argentina, Belgium, Federal Republic of Germany, France, Japan, Netherlands, Senegal, Union of Soviet Socialist Republics, United Kingdom and the United States of America and held four meetings. At the first meeting Mr. F. Burrows (United Kingdom) was elected Chairman.
2. The Committee adopted as the basis of its work the final clauses drafted by the Secretariat which appear in Doc No. 4 of the Conference, consisting of Articles A to H and the testimonium clause. In addition, the Committee considered a proposal of the Representative of Netherlands concerning the settlement of disputes; the question of a preamble to the Convention and the title of the Convention.
3. Article A - This Article was adopted without change, with one member voting against it.
 - 3.1 During the discussion of this Article the Representative of the U.S.S.R. stated that it was unacceptable to him because, in view of its purely technical and non-political nature, the Convention should be open for signature on behalf of any State, not only member States of the United Nations or the specialized agencies.
4. Article B - The proposal of the Representative of France to insert the words "or approval" between the words "ratification" and "by the signatory State" in the first paragraph was defeated by a vote of 6 against and 2 in favour. His proposal to add the words "in accordance with their constitutional procedures" was adopted by a vote of 5 in favour and one against.
5. Article C - As the Committee wished to see the Convention come into force as soon as possible, it specified 10 as the number of ratifications required under Article C for its entry into force.
 - 5.1 The Committee added the words "the Secretary-General of" after the word "with" in order to bring paragraph 2 of Article C into line with the "clauses de style" commonly used in accordance with the United Nations manual.
6. Article D - The Committee adopted this Article without change, with one member voting against it.

6.1 The Representative of the U.S.S.R. stated that this Article was unacceptable to him because, in view of its purely technical and non-political nature, the Convention should be open to accession by any State, not only member States of the United Nations or the specialized agencies.

7. Article E - The Committee adopted Article E, setting six months as the time required for denunciation to take effect.

8. Article F - The Representative of the U.S.S.R., seconded by the Representative of Senegal, proposed the deletion of Article F which was no longer in keeping with the world's political situation and reflected a spirit of disharmony with the recent resolutions of the United Nations General Assembly. This proposal was defeated by a vote of 6 against and 2 in favour.

8.1 The Representative of France requested that the French text of the end of paragraphs 1 and 3 be aligned with the English text, the words "qu'il représente dans les relations extérieures" (paragraph 1) and "que cet Etat représente dans les relations extérieures" (paragraph 2) being replaced by the words "dont il assume la responsabilité internationale" ("for whose international relations it is responsible"). This proposal was unanimously adopted.

8.2 The Representative of Senegal suggested that a compromise formula should be sought to meet the positions of his country and the U.S.S.R. on the one hand and of the other countries represented on the Committee on the other. As no specific compromise proposal was put forward, the Chairman proposed that Article F be voted on paragraph by paragraph. Paragraph 1 of Article F was adopted by a vote of 8 in favour and 2 against; the same was true of paragraphs 2 and 3.

8.3 The Representative of the U.S.S.R. reserved the right to raise the matter again in plenary session.

9. Article G - The Representative of Senegal, supported by the Representative of the U.S.S.R., proposed the deletion of Article G. The proposal being rejected, it was decided to retain Article G, without prejudice to further consideration of this Article in the event of the adoption of the proposal of the Netherlands Representative concerning the settlement of disputes. At a later stage the Netherlands' proposal in question having been adopted (see "new Article" in Annex II below) it was decided to insert the words "except as provided in paragraph 2 of 'new Article'" at the beginning of Article G. The Representative of The Netherlands reserved the position of his Delegation.

10. Article H - The Committee adopted paragraphs a) - d) without change. Consideration of paragraph e) was deferred until after Article F had been discussed; after it had been decided to retain Article F, the Chairman declared that paragraph e) of Article H was consequently considered adopted, and the Committee so agreed. Further on Article H, see paragraph 13 below.

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11. Testimonium - a) The text of the second paragraph should read "DONE at Tokyo on the _____ day, etc.";

b) The Representative of the U.S.S.R. proposed the insertion of the following sentence in the second paragraph: "The International Civil Aviation Organization shall prepare an official translation into the Russian language of the text of the Convention". The vote on this proposal was tied (2 to 2). At the next meeting of the Committee, the Representative of the U.S.S.R. withdrew his proposal.

12. "New Article" - The Representative of The Netherlands proposed to introduce provisions concerning the settlement of disputes: see the "new Article" in Annex II.

12.1 The Representative of the Federal Republic of Germany asked whether the proposal was within the competence of the Committee.

The Committee decided by 5 votes against one that it was competent to make a recommendation to the Conference on this subject.

12.2 The Representative of the U.S.S.R. pointed out that the Netherlands' proposal stipulated for compulsory settlement of disputes by the International Court of Justice but that most States have not accepted the compulsory jurisdiction of the Court. The Netherlands Representative agreed that the intent of paragraph 1 of his proposal was to provide for compulsory jurisdiction of the International Court of Justice, after the States concerned had failed to resolve the dispute by other methods of settlement, but that paragraph 2 of his proposal left it open for each State to decide at the time of its signature or ratification of the Convention whether or not it would agree to be bound by the provisions of paragraph 1 of his proposal.

12.3 Upon comment being made that it would be an innovation for the International Court of Justice to deal with criminal matters which were the subject of the present Convention, the Netherlands Representative explained that under his proposed article the Court would not be trying criminal cases but would only be interpreting a treaty or deciding questions as to its application. The Chairman drew attention to the provisions of Article 36, paragraph 1, of the Statute of the International Court of Justice which reads:

" Article 36

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force."

12.4 The Committee adopted paragraph 1 of the Netherlands proposal by 6 votes to one; and it adopted paragraphs 2 and 3 of the proposal by 6 votes and 7 votes respectively, with no opposition. It was also decided by the Committee, by 5 votes against 2, that the "new Article" should appear in the text of the Convention itself, rather than in an Optional Protocol to the Convention.

13. Article H - In consequence of the adoption of the "new Article", a new clause numbered (f) was added after (e) of Article H: see Annex I.

14. Preamble - The Committee considered the three alternative suggestions A, B and C of the Secretariat contained in Doc No. 66. In the opinion of the Committee the preamble should be as simple as possible and should not contain material which may give rise to questions of interpretation. Therefore, it recommends alternative A appearing in Doc No. 66.

15. Title - The Committee noted that there was a discrepancy in the title of the draft Convention as it appears in Doc No. 1 of the Conference, in that while in the English and Spanish texts the word "committed" was used, in the French text the word used was "survenant". The Committee draws the attention of the Drafting Committee to this point.

16. Recommendation: The Committee recommends that the Conference adopt the provisions set out in Annexes I and II hereto. The dissent of some of the members with respect to some of these provisions has been indicated above.

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ANNEX IArticle A

Until the date on which this Convention comes into force in accordance with the provisions of Article C, it shall remain open for signature on behalf of any State which at that date is a Member of the United Nations or of any of the Specialized Agencies.

Article B

1. This Convention shall be subject to ratification by the signatory States in accordance with their constitutional procedures.
2. The instruments of ratification shall be deposited with the International Civil Aviation Organization.

Article C

1. As soon as ten of the signatory States have deposited their instruments of ratification of this Convention, it shall come into force between them on the ninetieth day after the date of the deposit of the tenth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.
2. As soon as this Convention comes into force, it shall be registered with the Secretary-General of the United Nations by the International Civil Aviation Organization.

Article D

1. This Convention shall, after it has come into force, be open for accession by any State Member of the United Nations or of any of the Specialized Agencies.

2. The accession of a State shall be effected by the deposit of an instrument of accession with the International Civil Aviation Organization and shall take effect as from the ninetieth day after the date of such deposit.

Article E

1. Any Contracting State may denounce this Convention by notification addressed to the International Civil Aviation Organization.

2. Denunciation shall take effect six months after the date of receipt by the International Civil Aviation Organization of the notification of denunciation.

Article F

1. Any Contracting State may at the time of its ratification of or accession to this Convention or at any time thereafter declare by notification to the International Civil Aviation Organization that the Convention shall extend to any of the territories for whose international relations it is responsible.

2. The Convention shall, ninety days after the date of the receipt of such notification by the International Civil Aviation Organization, extend to the territories named therein.

3. Any Contracting State may denounce this Convention, in accordance with the provisions of Article E, separately for any or all of the territories for the international relations of which such State is responsible.

Article G

Except as provided in Article ("New Article") no reservation may be made to this Convention.

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Article H

The International Civil Aviation Organization shall give notice to all States Members of the United Nations or of any of the Specialized Agencies:

- a) of any signature of this Convention and the date thereof;
- b) of the deposit of any instrument of ratification or accession and the date thereof;
- c) of the date on which this Convention comes into force in accordance with Article C, paragraph 1;
- d) of the receipt of any notification of denunciation and the date thereof;
- e) of the receipt of any declaration or notification made under Article F and the date thereof;
- f) of the receipt of any declaration or notification made under Article "X" and the date thereof.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

DONE at _____ on the _____ day of _____ One Thousand Nine Hundred and Sixty-three in three authentic texts drawn up in the English, French and Spanish languages.

This Convention shall be deposited with the International Civil Aviation Organization with which, in accordance with Article A, it shall remain open for signature and the said Organization shall send certified copies thereof to all States Members of the United Nations or of any Specialized Agency.

ANNEX II

New Article X (Final Clauses)⁽¹⁾

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 the Court.
2. Each Contracting 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 State 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 International Civil Aviation Organization.

(1) This proposal is in conformity with Articles XX and XXI of the Brussels Convention on Liability of Operators of Nuclear Ships, 1962.

TEXT PREPARED BY THE DRAFTING COMMITTEE FOR THE SECOND READINGArticle 4A

1. The provisions of this Chapter shall apply with respect to the acts and offences described in Article 1, paragraph 1, if committed or about to be committed by a person at any time when the aircraft is

- (a) in flight in the airspace of a State other than the State of registration; or
 - (b) in flight in the airspace of the State of registration, if the point of departure or destination is situated in another State, or if the aircraft thereafter flies in the airspace of another State with the said person still on board; or
 - (c) in flight over the high seas or any other area outside the territory of any State unless the point of departure and the point of destination of the flight are situated in the State of registration of the aircraft, in which case the Convention shall only apply if the aircraft thereafter flies in the airspace of another State with the said person still on board; or
 - (d) on the surface of the high seas or any other area outside the territory of any State.
-

TEXT PREPARED BY THE DRAFTING COMMITTEE FOR THE SECOND READING

Chapter . .

Article 11 (ex-Article 11)

In taking any measures for investigation or arrest or otherwise exercising jurisdiction in connection with any offence committed on board an aircraft the Contracting States shall pay due regard to the safety and other interests of air navigation and shall so act as to avoid delay of the aircraft, passengers, crew or cargo.

Chapter . . Extradition

Article 12 (ex-Article 12)

1. Offences committed on aircraft registered in a Contracting State shall be treated, for the purpose of extradition, as if they had been committed not only in the place in which they have occurred but also in the territory of the State of registration of the aircraft.
 2. Without prejudice to the provisions of paragraph 1 of this Article, nothing in this Convention shall be deemed to create an obligation to grant extradition.
-

SPAIN AND UNITED KINGDOM: Proposal

Substitute for Article 4A, para. 1 (Doc No. 80) the following text:

This Chapter shall not apply in respect of offences or acts committed by a person on board an aircraft in flight in the State of registration, unless the point of departure or of destination is situated in the territory of another State or the aircraft subsequently flies in the airspace of another State with such person on board.

Doc No. 83

TEXT PREPARED BY THE DRAFTING COMMITTEE FOR THE SECOND READINGArticle 2*

Except when the safety of the aircraft or of persons or property on board so requires, no provision of this Convention shall be interpreted as authorizing or requiring any action in respect of offences against penal laws of a political nature or those based on racial or religious discrimination.

Article 13*

If Contracting States establish joint air transport operating organizations or international operating agencies, which operate aircraft not registered in any one State those States shall, according to the circumstances of the case, designate the State among them which, for the purposes of this Convention, shall be considered as the State of registration /and shall give notice thereof to any State into which the aircraft may operate/.

* Provisional number

TEXT PREPARED BY THE DRAFTING COMMITTEE FOR THE SECOND READING

Article 4A, paragraph 1

The provisions of this Chapter shall not apply to the acts and offences described in Article 1, paragraph 1, if committed or about to be committed by a person on board an aircraft in flight in the State of registration, over the high seas or any other area outside the territory of any State unless the point of departure or of destination of the flight is situated in a State other than that of registration, or the aircraft subsequently flies in the airspace of a State other than that of registration, with such person still on board.

Doc No. 85

TEXT PREPARED BY THE DRAFTING COMMITTEE FOR THE SECOND READING

Article 4A, paragraph 2*

2. Notwithstanding the provisions of Article 1, paragraph 3, an aircraft shall, for the purposes of this Chapter, be 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 outside an airport, the provisions of this Chapter shall continue to apply with respect to acts and offences committed on board until** competent authorities of a State take over the responsibility for the aircraft and for the persons and property on board.

* Adoption of this text would involve deletion of Article 5, paragraph 3 from Doc No. 74.

** Certain Representatives preferred to use the word "before".

TEXT PREPARED BY THE DRAFTING COMMITTEE FOR THE THIRD READING

CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS
COMMITTED ON BOARD AIRCRAFT

The States Parties to this Convention HAVE AGREED as follows:

Chapter I - Scope of the Convention

Article 1

1. This Convention shall apply in respect of:
 - a) offences against penal law;
 - b) acts which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board.
2. Except as provided in Chapter III, this Convention shall apply only in respect of offences committed or acts done by a person on board any aircraft registered in a Contracting State, while that aircraft is in flight or on the surface of the high seas or of any other area outside the territory of any State.
3. For the purposes of this Convention, an aircraft is considered to be in flight from the moment when power is applied for the purpose of take-off until the moment when the landing run ends.
4. This Convention shall not apply to aircraft used in military, customs or police services.

Article 2

Without prejudice to the provisions of Article 4 and except when the safety of the aircraft or of persons or property on board so requires, no provision of this Convention shall be interpreted as authorizing or requiring any action in respect of offences against penal laws of a political nature or those based on racial or religious discrimination.

Chapter II - Jurisdiction

Article 3

1. The State of registration of the aircraft is competent to exercise jurisdiction over offences and acts as described in Article 1, paragraph 1, committed on board.
2. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction as the State of registration over offences committed on board aircraft registered in such State.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 4

A Contracting State which is not the State of registration may not interfere with an aircraft in flight in order to exercise its criminal jurisdiction over an offence committed on board except in the following cases:

- a) the offence has effect on the territory of such State;
- b) the offence has been committed by or against a national, or permanent resident of, such State;
- c) the offence is against the security of such State;
- d) the offence consists of a breach of any rules or regulations relating to the flight or manoeuvre of aircraft in force in such State;
- e) the exercise of jurisdiction is necessary to ensure the observance of any obligation of such State under a multilateral international agreement.

Chapter III - Powers of the aircraft commander

Article 5

1. The provisions of this Chapter shall apply to the offences and acts committed or about to be committed by a person on board an aircraft in flight in the airspace of the State of registration or over the high seas or any other area outside the territory of any State only if the last point of take-off or the next point of intended landing is situated in a State other than that of registration, or the aircraft subsequently flies in the airspace of a State other than that of registration with such person still on board.
2. Notwithstanding the provisions of Article 1, paragraph 3, an aircraft shall, for the purposes of this Chapter, be 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 outside an airport, the provisions of this Chapter shall continue to apply with respect to offences and acts committed on board until competent authorities of a State take over the responsibility for the aircraft and for the persons and property on board.

Article 6

1. The aircraft commander may, when he has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an offence or act contemplated in Article 1, paragraph 1, impose upon such person reasonable measures including restraint which are necessary:

- a) to protect the safety of the aircraft, or of persons or property therein; or
- b) to maintain good order and discipline on board; or
- c) to enable him to deliver such person to competent authorities or to disembark him in accordance with the provisions of this Chapter.

2. The aircraft commander may require or authorize the assistance of other crew members and may request or authorize, but not require, the assistance of passengers to restrain any person whom he is entitled to restrain. Any crew member or passenger may also take reasonable preventive measures without such authorization when he has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft, or of persons or property therein.

Article 7

1. Measures of restraint imposed upon a person in accordance with Article 6 shall not be continued beyond any point at which the aircraft lands unless:

- a) such point is in the territory of a non-Contracting State and its authorities refuse to permit disembarkation of that person or those measures have been imposed in accordance with Article 6, paragraph 1 c);
- b) the aircraft makes a forced landing outside an airport and the aircraft commander is unable to deliver that person to competent authorities; or
- c) that person agrees to onward carriage under restraint.

2. The aircraft commander shall as soon as practicable, and if possible before landing in the territory of a State with a person on board who has been placed under restraint in accordance with the provisions of Article 6, notify the authorities of such State of the fact that a person on board is under restraint and of the reasons for such restraint.

Article 8

1. The aircraft commander may, in so far as it is necessary for the purposes of subparagraph a) or b) of paragraph 1 of Article 6, disembark in the territory of any State in which the aircraft lands any person who he has reasonable grounds to believe has committed, or is about to commit, on board the aircraft an act contemplated in Article 1, paragraph 1 b).

2. The aircraft commander shall report to the authorities of the State in which he disembarks any person pursuant to this Article, the fact of, and the reasons for, such disembarkation.

Article 9

1. The aircraft commander may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person who he has reasonable grounds to believe has committed on board the aircraft an act which, in his opinion, is a serious offence according to the penal law of the State of registration of the aircraft.
2. The aircraft commander shall as soon as practicable and if possible before landing in the territory of a Contracting State with a person on board whom the aircraft commander intends to deliver in accordance with the preceding paragraph, notify the authorities of such State of his intention to deliver such person and the reasons therefor.
3. The aircraft commander shall furnish the authorities to whom any suspected offender is delivered in accordance with the provisions of this Article with evidence and information which, under the law of the State of registration of the aircraft, are lawfully in his possession.

Article 10

For actions taken in accordance with this Convention, neither the aircraft commander, any other member of the crew, any passenger, the owner or operator of the aircraft, nor the person on whose behalf the flight was performed shall be held responsible in any proceeding on account of the treatment undergone by the person against whom the actions were taken.

Chapter IV - Unlawful Seizure of Aircraft

Article 11

1. When a person on board has unlawfully committed by force or threat thereof an act of interference, seizure, or other wrongful exercise of control of an aircraft in flight or when such an act is about to be committed, 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 in paragraph 1 of this Article, the Contracting State in which the aircraft lands shall permit its passengers and crew to continue their journey as soon as practicable, and shall return the aircraft and its cargo to the persons lawfully entitled to possession.

Chapter V - Powers and Duties of States

Article 12

Any Contracting State shall allow the commander of an aircraft registered in another Contracting State to disembark any person pursuant to Article 8, paragraph 1.

Article 13

1. Any Contracting State shall take delivery of any person whom the aircraft commander delivers pursuant to Article 9, paragraph 1.
2. Upon being satisfied that the circumstances so warrant, any Contracting State shall take custody or other measures to ensure the presence of any person suspected of an act contemplated in Article 11, paragraph 1 and of any person of whom it has taken delivery. 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 reasonably necessary to enable any criminal or extradition proceedings to be instituted.
3. Any person in custody pursuant to the previous paragraph shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.
4. Any Contracting State, in whose territory an aircraft lands following the commission of an act contemplated in Article 11, paragraph 1, or which takes custody of a person pursuant to paragraph 2 of this Article, shall immediately make a preliminary enquiry into the facts.
5. When a State, pursuant to this Article, has taken a person into custody, it shall promptly notify the State of registration of the aircraft and the State of nationality of the detained person and, if it considers it advisable, any other interested State of the fact that such person is in custody and of the circumstances which warrant his detention. In the case of any preliminary enquiry pursuant to paragraph 4 of this Article the State shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 14

1. When any person has been disembarked in accordance with Article 8, paragraph 1, or delivered in accordance with Article 9, paragraph 1, or has disembarked after committing an act contemplated in Article 11, paragraph 1, and when such person cannot or does not desire to continue his journey and the State of landing refuses to admit him, that State may, if the person in question is not a national or permanent resident of that State, return him to the territory of the State of which he is a national or permanent resident or to the territory of the State in which he began his journey by air.
2. Neither disembarkation, nor delivery, nor the taking of custody or other measures contemplated in Article 13, paragraph 2, nor return of the person concerned, shall be considered as admission to the territory of the Contracting State concerned for the purpose of its law relating to entry or admission of persons and nothing in this Convention shall affect the law of a Contracting State relating to the expulsion of persons from its territory.

Article 15

1. In the cases described in Article 14, paragraph 1, any person who wishes to continue his journey shall be at liberty as soon as practicable to proceed to any destination of his choice unless he is detained in accordance with the law of the State of landing for the purpose of expulsion or of extradition or criminal proceedings.

2. Without prejudice to its law as to entry and admission to, ~~and extradition~~ and expulsion from its territory, a Contracting State in whose territory a person has been disembarked in accordance with Article 8, paragraph 1, or delivered in accordance with Article 9, paragraph 1 or has disembarked and is suspected of having committed an act contemplated in Article 11, paragraph 1, shall accord to such person treatment which is no less favourable for his protection and security than that accorded to nationals of such Contracting State in like circumstances.

Chapter VI - Extradition

Article 16

1. Offences committed on aircraft registered in a Contracting State shall be treated, for the purpose of extradition, as if they had been committed not only in the place in which they have occurred but also in the territory of the State of registration of the aircraft.

2. Without prejudice to the provisions of paragraph 1 of this Article, nothing in this Convention shall be deemed to create an obligation to grant extradition.

Chapter VII - Other Provisions

Article 17

In taking any measures for investigation or arrest or otherwise exercising jurisdiction in connection with any offence committed on board an aircraft the Contracting States shall pay due regard to the safety and other interests of air navigation and shall so act as to avoid unnecessary delay of the aircraft, passengers, crew or cargo.

Article 18

If Contracting States establish joint air transport operating organizations or international operating agencies, which operate aircraft not registered in any one State those States shall, according to the circumstances of the case, designate the State among them which, for the purposes of this Convention, shall be considered as the State of registration and shall give notice thereof to the International Civil Aviation Organization which shall communicate the notice to all Contracting States.

TEXT OF FINAL CLAUSES FOR FINAL APPROVAL

Article 19

Until the date on which this Convention comes into force in accordance with the provisions of Article 21, it shall remain open for signature on behalf of any State which at that date is a Member of the United Nations or of any of the Specialized Agencies.

Article 20

1. This Convention shall be subject to ratification by the signatory States in accordance with their constitutional procedures.
2. The instruments of ratification shall be deposited with the International Civil Aviation Organization.

Article 21

1. As soon as twelve of the signatory States have deposited their instruments of ratification of this Convention, it shall come into force between them on the ninetieth day after the date of the deposit of the twelfth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.
2. As soon as this Convention comes into force, it shall be registered with the Secretary-General of the United Nations by the International Civil Aviation Organization.

Article 22

1. This Convention shall, after it has come into force, be open for accession by any State Member of the United Nations or of any of the Specialized Agencies.

2. The accession of a State shall be effected by the deposit of an instrument of accession with the International Civil Aviation Organization and shall take effect on the ninetieth day after the date of such deposit.

Article 23

1. Any Contracting State may denounce this Convention by notification addressed to the International Civil Aviation Organization.

2. Denunciation shall take effect six months after the date of receipt by the International Civil Aviation Organization of the notification of denunciation.

Article 24

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 the Court.

2. Each Contracting 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 State 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 International Civil Aviation Organization.

Article 25

Except as provided in Article 24, no reservation may be made to this Convention.

Article 26

The International Civil Aviation Organization shall give notice to all States Members of the United Nations or of any of the Specialized Agencies:

- a) of any signature of this Convention and the date thereof;
- b) of the deposit of any instrument of ratification or accession and the date thereof;
- c) of the date on which this Convention comes into force in accordance with Article 21, paragraph 1;
- d) of the receipt of any notification of denunciation and the date thereof; and
- e) of the receipt of any declaration or notification made under Article 24 and the date thereof.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

DONE at Tokyo on the fourteenth day of September One Thousand Nine Hundred and Sixty-three in three authentic texts drawn up in the English, French and Spanish languages.

This Convention shall be deposited with the International Civil Aviation Organization with which, in accordance with Article 19, it shall remain open for signature and the said Organization shall send certified copies thereof to all States Members of the United Nations or of any Specialized Agency.

RESOLUTIONS PROPOSED BY THE DELEGATIONS AT THE CONFERENCE

A

The International Conference on Air Law held in the City of Tokyo,

HAVING ADOPTED a Convention on Offences and Certain Other Acts Committed on Board Aircraft,

EXPRESSES its deep appreciation to the Government and the People of Japan for making possible the holding of the Conference in Tokyo and for their generous hospitality and great contribution to the successful completion of the work of the Conference.

- - - - -

B

The International Conference on Air Law held in the City of Tokyo,

CONSIDERING that it has been convened and held under the auspices of the International Civil Aviation Organization, and

CONSIDERING that it has taken as a basis for its work the proposed text of the Convention on Offences and Certain Other Acts Committed on Board Aircraft developed by the Legal Committee of the International Civil Aviation Organization,

WISHES TO EXPRESS its deep appreciation to the International Civil Aviation Organization, its Secretariat and the Legal Committee of the Organization for the major contribution of these efforts to the development of this Convention.

CONVENTION**ON OFFENCES AND
CERTAIN OTHER ACTS
COMMITTED ON BOARD
AIRCRAFT**

THE STATES Parties to this Convention
HAVE AGREED as follows:

**Chapter I—Scope of the
Convention****Article 1**

1. This Convention shall apply in respect of:

- a) offences against penal law;
- b) acts which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board.

2. Except as provided in Chapter III, this Convention shall apply in respect of offences committed or acts done by a person on board any aircraft registered in a Contracting State, while that aircraft is in flight or on the surface of the high seas or of any other area outside the territory of any State.

3. For the purposes of this Convention, an aircraft is considered to be in flight from the moment when power is applied for the purpose of take-off until the moment when the landing run ends.

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

Article 2

Without prejudice to the provisions of Article 4 and except when the safety of the aircraft or of persons or property on board so requires, no provision of this Convention shall be interpreted as authorizing or requiring any action

CONVENTION**RELATIVE AUX INFRACTIONS
ET A CERTAINS
AUTRES ACTES SUR-
VENANT A BORD
DES AERONEFS**

LES ETATS Parties à la présente Convention
SONT CONVENUS des dispositions
suivantes:

**Titre 1^{er}—Champ d'application
de la Convention****Article 1^{er}**

1. La présente Convention s'applique:

- a) aux infractions aux lois pénales;
- b) aux actes qui, constituant ou non des infractions, peuvent compromettre ou compromettent la sécurité de l'aéronef ou de personnes ou de biens à bord, ou compromettent le bon ordre et la discipline à bord.

2. Sous réserve des dispositions du Titre III, la présente Convention s'applique aux infractions commises ou actes accomplis par une personne à bord d'un aéronef immatriculé dans un Etat contractant pendant que cet aéronef se trouve, soit en vol, soit à la surface de la haute mer ou d'une région ne faisant partie du territoire d'aucun Etat.

3. Aux fins de la présente Convention, un aéronef est considéré comme en vol depuis le moment où la force motrice est employée pour décoller jusqu'au moment où l'atterrissage a pris fin.

4. La présente Convention ne s'applique pas aux aéronefs utilisés à des fins militaires, de douane ou de police.

Article 2

Sans préjudice des dispositions de l'Article 4 et sous réserve des exigences de la sécurité de l'aéronef et des personnes ou des biens à bord, aucune disposition de la présente Convention ne peut être interprétée comme autorisant ou

CONVENIO**SOBRE LAS INFRA-
CCIONES Y CIERTOS
OTROS ACTOS COMETI-
DOS A BORDO DE
LAS AERONAVES**

LOS ESTADOS Partes en el presente Convenio
HAN ACORDADO lo siguiente:

**Capítulo I—Campo de aplicación
del Convenio****Artículo 1**

1. El presente Convenio se aplicará a:

- a) las infracciones a las leyes penales;
- b) los actos que, sean o no infracciones, puedan poner o pongan en peligro la seguridad de la aeronave o de las personas o bienes en la misma, o que pongan en peligro el buen orden y la disciplina a bordo.

2. A reserva de lo dispuesto en el Capítulo III, este Convenio se aplicará a las infracciones cometidas y a los actos ejecutados por una persona a bordo de cualquier aeronave matriculada en un Estado Contratante mientras se halle en vuelo, en la superficie de alta mar o en la de cualquier otra zona situada fuera del territorio de un Estado.

3. A los fines del presente Convenio, se considera que una aeronave se encuentra en vuelo desde que se aplica la fuerza motriz para despegar hasta que termina el recorrido de aterrizaje.

4. El presente Convenio no se aplicará a las aeronaves utilizadas en servicios militares, de aduanas y de policía.

Artículo 2

Sin perjuicio de las disposiciones de Artículo 4 y salvo que lo requiera la seguridad de la aeronave y de las personas o bienes a bordo, ninguna disposición de este Convenio se interpretará en el sentido de que autoriza o exige

in respect of offences against penal laws of a political nature or those based on racial or religious discrimination.

prescrivant l'application de quelque mesure que ce soit dans le cas d'infractions à des lois pénales de caractère politique ou fondées sur la discrimination raciale ou religieuse.

medida alguna en caso de infracciones a las leyes penales de carácter político o basadas en discriminación racial o religiosa.

Chapter II—Jurisdiction

Titre II—Compétence

Capítulo II—Jurisdicción

Article 3

Article 3

Artículo 3

1. The State of registration of the aircraft is competent to exercise jurisdiction over offences and acts committed on board.

1. L'Etat d'immatriculation de l'aéronef est compétent pour connaître des infractions commises et actes accomplis à bord.

1. El Estado de matrícula de la aeronave será competente para conocer de las infracciones y actos cometidos a bordo.

2. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction as the State of registration over offences committed on board aircraft registered in such State.

2. Tout Etat contractant prend les mesures nécessaires pour établir sa compétence, en sa qualité d'Etat d'immatriculation, aux fins de connaître des infractions commises à bord des aéronefs inscrits sur son registre d'immatriculation.

2. Cada Estado Contratante deberá tomar las medidas necesarias a fin de establecer su jurisdicción como Estado de matrícula sobre las infracciones cometidas a bordo de las aeronaves matriculadas en tal Estado.

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

3. La présente Convention n'écarte aucune compétence pénale exercée conformément aux lois nationales.

3. El presente Convenio no excluye ninguna jurisdicción penal ejercida de acuerdo con las leyes nacionales.

Article 4

Article 4

Artículo 4

A Contracting State which is not the State of registration may not interfere with an aircraft in flight in order to exercise its criminal jurisdiction over an offence committed on board except in the following cases:

Un Etat contractant qui n'est pas l'Etat d'immatriculation ne peut gêner l'exploitation d'un aéronef en vol en vue d'exercer sa compétence pénale à l'égard d'une infraction commise à bord que dans les cas suivants:

El Estado Contratante que no sea el de matrícula no podrá perturbar el vuelo de una aeronave a fin de ejercer su jurisdicción penal sobre una infracción cometida a bordo más que en los casos siguientes:

- a) the offence has effect on the territory of such State;
- b) the offence has been committed by or against a national or permanent resident of such State;
- c) the offence is against the security of such State;
- d) the offence consists of a breach of any rules or regulations relating to the flight or manoeuvre of aircraft in force in such State;
- e) the exercise of jurisdiction is necessary to ensure the observance of any obligation of such State under a multilateral international agreement.

- a) cette infraction a produit effet sur le territoire dudit Etat;
- b) cette infraction a été commise par ou contre un ressortissant dudit Etat ou une personne y ayant sa résidence permanente;
- c) cette infraction compromet la sécurité dudit Etat;
- d) cette infraction constitue une violation des règles ou règlements relatifs au vol ou à la manoeuvre des aéronefs en vigueur dans ledit Etat;
- e) l'exercice de cette compétence est nécessaire pour assurer le respect d'une obligation qui incombe audit Etat en vertu d'un accord international multilatéral.

- a) la infracción produce efectos en el territorio de tal Estado;
- b) la infracción ha sido cometida por o contra un nacional de tal Estado o una persona que tenga su residencia permanente en el mismo;
- c) la infracción afecta a la seguridad de tal Estado;
- d) la infracción constituye una violación de los reglamentos sobre vuelo o maniobra de las aeronaves, vigentes en tal Estado;
- e) cuando sea necesario ejercer la jurisdicción para cumplir las obligaciones de tal Estado de conformidad con un acuerdo internacional multilateral.

Chapter III—Powers of the aircraft commander

Titre III—Pouvoirs du commandant d'aéronef

Capítulo III—Facultades del comandante de la aeronave

Article 5

Article 5

Artículo 5

1. The provisions of this Chapter shall not apply to offences and acts committed or about to be committed by a

1. Les dispositions du présent Titre ne s'appliquent aux infractions et aux actes commises ou accomplis, ou sur le

1. Las disposiciones de este Capítulo no se aplicarán a las infracciones ni a los actos cometidos o a punto de cometerse

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person on board an aircraft in flight in the airspace of the State of registration or over the high seas or any other area outside the territory of any State unless the last point of take-off or the next point of intended landing is situated in a State other than that of registration, or the aircraft subsequently flies in the airspace of a State other than that of registration with such person still on board.

2. Notwithstanding the provisions of Article 1, paragraph 3, an aircraft shall for the purposes of this Chapter, be 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 provisions of this Chapter shall continue to apply with respect to offences and acts committed on board until competent authorities of a State take over the responsibility for the aircraft and for the persons and property on board.

Article 6

1. The aircraft commander may, when he has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an offence or act contemplated in Article 1, paragraph 1, impose upon such person reasonable measures including restraint which are necessary:

- a) to protect the safety of the aircraft, or of persons or property therein; or
- b) to maintain good order and discipline on board; or
- c) to enable him to deliver such person to competent authorities or to disembark him in accordance with the provisions of this Chapter.

2. The aircraft commander may require or authorize the assistance of other crew members and may request or authorize, but not require, the assistance of passengers to restrain any person whom he is entitled to restrain. Any crew member or passenger may also take reasonable preventive measures without such authorization when he has reasonable grounds to believe that such action is immediately necessary to pro-

point de l'être, par une personne à bord d'un aéronef en vol, soit dans l'espace aérien de l'Etat d'immatriculation, soit au-dessus de la haute mer ou d'une région ne faisant partie du territoire d'aucun Etat, que si le dernier point de décollage ou le prochain point d'atterrissage prévu est situé sur le territoire d'un Etat autre que celui d'immatriculation, ou si l'aéronef vole ultérieurement dans l'espace aérien d'un Etat autre que l'Etat d'immatriculation, ladite personne étant encore à bord.

2. Aux fins du présent Titre, et nonobstant les dispositions de l'Article 1^{er}, paragraphe 3, un aéronef est considéré comme en vol depuis le moment où, l'embarquement étant terminé, toutes ses portes extérieures ont été fermées jusqu'au moment où l'une de ces portes est ouverte en vue du débarquement. En cas d'atterrissage forcé, les dispositions du présent Titre continuent de s'appliquer à l'égard des infractions et des actes survenus à bord jusqu'à ce que l'autorité compétente d'un Etat prenne en charge l'aéronef ainsi que les personnes et biens à bord.

Article 6

1. Lorsque le commandant d'aéronef est fondé à croire qu'une personne a commis ou accompli ou est sur le point de commettre ou d'accomplir à bord une infraction ou un acte, visés à l'Article 1^{er}, paragraphe 1, il peut prendre, à l'égard de cette personne, les mesures raisonnables, y compris les mesures de contrainte, qui sont nécessaires:

- a) pour garantir la sécurité de l'aéronef ou de personnes ou de biens à bord;
- b) pour maintenir le bon ordre et la discipline à bord;
- c) pour lui permettre de remettre ladite personne aux autorités compétentes ou de la débarquer conformément aux dispositions du présent Titre.

2. Le commandant d'aéronef peut requérir ou autoriser l'assistance des autres membres de l'équipage et, sans pouvoir l'exiger, demander ou autoriser celle des passagers en vue d'appliquer les mesures de contrainte qu'il est en droit de prendre. Tout membre d'équipage ou tout passager peut également prendre, sans cette autorisation, toutes mesures préventives raisonnables, s'il est fondé à croire qu'elles s'imposent

por una persona a bordo de una aeronave en vuelo en el espacio aéreo del Estado de matrícula o sobre la alta mar u otra zona situada fuera del territorio de un Estado, a no ser que el último punto de despegue o el próximo punto de aterrizaje previsto se hallen en un Estado distinto del de matrícula o si la aeronave vuela posteriormente en el espacio aéreo de un Estado distinto del de matrícula, con dicha persona a bordo.

2. No obstante lo previsto en el Artículo 1, párrafo 3, se considerará, a los fines del presente Capítulo, que una aeronave se encuentra en vuelo desde el momento en que se cierren todas las puertas externas después del embarque y el momento en que se abra cualquiera de dichas puertas para el desembarque. En caso de aterrizaje forzoso, las disposiciones de este Capítulo continuarán aplicándose a las infracciones y actos cometidos a bordo hasta que las autoridades competentes de un Estado se hagan cargo de la aeronave y de las personas y bienes en la misma.

Artículo 6

1. Cuando el comandante de la aeronave tenga razones fundadas para creer que una persona ha cometido, o está a punto de cometer, a bordo una infracción o un acto previstos en el Artículo 1, párrafo 1, podrá imponer a tal persona las medidas razonables, incluso coercitivas, que sean necesarias:

- a) para proteger la seguridad de la aeronave y de las personas y bienes en la misma;
- b) para mantener el buen orden y la disciplina a bordo;
- c) para permitirle entregar tal persona a las autoridades competentes o desembarcarla de acuerdo con las disposiciones de este Capítulo.

2. El comandante de la aeronave puede exigir o autorizar la ayuda de los demás miembros de la tripulación y solicitar o autorizar, pero no exigir, la ayuda de los pasajeros, con el fin de tomar medidas coercitivas contra cualquier persona sobre la que tenga tal derecho. Cualquier miembro de la tripulación o pasajero podrá tomar igualmente medidas preventivas razonables sin tal autorización, cuando tenga razones

tect the safety of the aircraft, or of persons or property therein.

Article 7

1. Measures of restraint imposed upon a person in accordance with Article 6 shall not be continued beyond any point at which the aircraft lands unless:

- a) such point is in the territory of a non-Contracting State and its authorities refuse to permit disembarkation of that person or those measures have been imposed in accordance with Article 6, paragraph 1 c) in order to enable his delivery to competent authorities;
- b) the aircraft makes a forced landing and the aircraft commander is unable to deliver that person to competent authorities; or
- c) that person agrees to onward carriage under restraint.

2. The aircraft commander shall as soon as practicable, and if possible before landing in the territory of a State with a person on board who has been placed under restraint in accordance with the provisions of Article 6, notify the authorities of such State of the fact that a person on board is under restraint and of the reasons for such restraint.

Article 8

1. The aircraft commander may, in so far as it is necessary for the purpose of subparagraph a) or b) of paragraph 1 of Article 6, disembark in the territory of any State in which the aircraft lands any person who he has reasonable grounds to believe has committed, or is about to commit, on board the aircraft an act contemplated in Article 1, paragraph 1 b).

2. The aircraft commander shall report to the authorities of the State in which he disembarks any person pursuant to this Article, the fact of, and the reasons for, such disembarkation.

immédiatement pour garantir la sécurité de l'aéronef ou de personnes ou de biens à bord.

Article 7

1. Les mesures de contrainte prises à l'égard d'une personne conformément aux dispositions de l'Article 6 cesseront d'être appliquées au-delà de tout point d'atterrissage à moins que:

- a) ce point ne soit situé sur le territoire d'un Etat non contractant et que les autorités de cet Etat ne refusent d'y permettre le débarquement de la personne intéressée ou que des mesures de contrainte n'aient été imposées à celle-ci conformément aux dispositions de l'Article 6, paragraphe 1, c), pour permettre sa remise aux autorités compétentes;
- b) l'aéronef ne fasse un atterrissage forcé et que le commandant d'aéronef ne soit pas en mesure de remettre la personne intéressée aux autorités compétentes;
- c) la personne intéressée n'accepte de continuer à être transportée au-delà de ce point en restant soumise aux mesures de contrainte.

2. Le commandant d'aéronef doit, dans les moindres délais et, si possible, avant d'atterrir sur le territoire d'un Etat avec à son bord une personne soumise à une mesure de contrainte prise conformément aux dispositions de l'Article 6, informer les autorités dudit Etat de la présence à bord d'une personne soumise à une mesure de contrainte et des raisons de cette mesure.

Article 8

1. Lorsque le commandant d'aéronef est fondé à croire qu'une personne a accompli ou est sur le point d'accomplir à bord un acte visé à l'Article 1er, paragraphe 1, b), il peut débarquer cette personne sur le territoire de tout Etat où atterrit l'aéronef pour autant que cette mesure, soit nécessaire aux fins visées à Article 6, paragraphe 1, a) ou b).

2. Le commandant d'aéronef informe les autorités de l'Etat sur le territoire duquel il débarque une personne, conformément aux dispositions du présent article, de ce débarquement et des raisons qui l'ont motivé.

fundadas para creer que tales medidas son urgentes a fin de proteger la seguridad de la aeronave, de las personas y de los bienes en la misma.

Artículo 7

1. Las medidas coercitivas impuestas a una persona conforme a lo previsto en el Artículo 6 no continuarán aplicándose más allá de cualquier punto de aterrizaje, a menos que:

- a) dicho punto se halle en el territorio de un Estado no Contratante y sus autoridades no permitan desembarcar a tal persona, o las medidas coercitivas se han impuesto de acuerdo con lo dispuesto en el Artículo 6, párrafo 1 c) para permitir su entrega a las autoridades competentes; o
- b) la aeronave haga un aterrizaje forzoso y el comandante de la aeronave no pueda entregar la persona a las autoridades competentes; o
- c) dicha persona acepte continuar el transporte sometida a las medidas coercitivas.

2. Tan pronto como sea factible y, si es posible, antes de aterrizar en el Estado con una persona a bordo, sometida a las medidas coercitivas de acuerdo con el Artículo 6, el comandante de la aeronave notificará a las autoridades de tal Estado el hecho de que una persona se encuentra a bordo sometida a dichas medidas coercitivas y las razones de haberlas adoptado.

Artículo 8

1. El comandante de la aeronave podrá, siempre que sea necesario a los fines previstos en el Artículo 6, párrafo 1 a) o b), desembarcar en el territorio de cualquier Estado en el que aterrice la aeronave a cualquier persona sobre la que tenga razones fundadas para creer que ha cometido, o está a punto de cometer, a bordo de la aeronave, un acto previsto en el Artículo 1, párrafo 1 b).

2. El comandante de la aeronave comunicará a las autoridades del Estado donde desembarque a una persona, de acuerdo con lo previsto en el presente Artículo, el hecho de haber efectuado tal desembarque y las razones de ello.

Article 9

1. The aircraft commander may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person who he has reasonable grounds to believe has committed on board the aircraft an act which, in his opinion, is a serious offence according to the penal law of the State of registration of the aircraft.

2. The aircraft commander shall as soon as practicable and if possible before landing in the territory of a Contracting State with a person on board whom the aircraft commander intends to deliver in accordance with the preceding paragraph, notify the authorities of such State of his intention to deliver such person and the reasons therefor.

3. The aircraft commander shall furnish the authorities to whom any suspected offender is delivered in accordance with the provisions of this Article with evidence and information which, under the law of the State of registration of the aircraft, are lawfully in his possession.

Article 10

For actions taken in accordance with this Convention, neither the aircraft commander, any other member of the crew, any passenger, the owner or operator of the aircraft, nor the person on whose behalf the flight was performed shall be held responsible in any proceeding on account of the treatment undergone by the person against whom the actions were taken.

Chapter IV—Unlawful Seizure of Aircraft**Article 11**

1. When a person on board has unlawfully committed by force or threat thereof an act of interference, seizure, or other wrongful exercise of control of an aircraft in flight or when such an act is about to be committed, 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.

Article 9

1. Lorsque le commandant d'aéronef est fondé à croire qu'une personne a accompli à bord de l'aéronef un acte qui, selon lui, constitue une infraction grave, conformément aux lois pénales de l'Etat d'immatriculation de l'aéronef, il peut remettre ladite personne aux autorités compétentes de tout Etat contractant sur le territoire duquel atterrit l'aéronef.

2. Le commandant d'aéronef doit, dans les moindres délais et si possible avant d'atterrir sur le territoire d'un Etat contractant avec à bord une personne qu'il a l'intention de remettre conformément aux dispositions du paragraphe précédent, faire connaître cette intention aux autorités de cet Etat ainsi que les raisons qui la motivent.

3. Le commandant d'aéronef communique aux autorités auxquelles il remet l'auteur présumé de l'infraction, conformément aux dispositions du présent article, les éléments de preuve et d'information qui, conformément à la loi de l'Etat d'immatriculation de l'aéronef, sont légitimement en sa possession.

Article 10

Lorsque l'application des mesures prévues par la présente Convention est conforme à celle-ci, ni le commandant d'aéronef, ni un autre membre de l'équipage, ni un passager, ni le propriétaire, ni l'exploitant de l'aéronef, ni la personne pour le compte de laquelle le vol a été effectué, ne peuvent être déclarés responsables dans une procédure engagée en raison d'un préjudice subi par la personne qui a fait l'objet de ces mesures.

Titre IV—Capture illicite d'aéronefs**Article 11**

1. Lorsque, illicitement, et par violence ou menace de violence, une personne à bord a gêné l'exploitation d'un aéronef en vol, s'en est emparé ou en a exercé le contrôle, ou lorsqu'elle est sur le point d'accomplir un tel acte, les Etats contractants prennent toutes mesures appropriées pour restituer ou conserver le contrôle de l'aéronef au commandant légitime.

Artículo 9

1. El comandante de la aeronave podrá entregar a las autoridades competentes de cualquier Estado Contratante en cuyo territorio aterrice la aeronave a cualquier persona, si tiene razones fundadas para creer que dicha persona ha cometido a bordo de la aeronave un acto que, en su opinión, constituye una infracción grave de acuerdo con las leyes penales del Estado de matrícula de la aeronave.

2. El comandante de la aeronave, tan pronto como sea factible, y, si es posible, antes de aterrizar en el territorio de un Estado Contratante con una persona a bordo a la que se proponga entregar de conformidad con el párrafo anterior, notificará a las autoridades de dicho Estado su intención de entregar dicha persona y los motivos que tenga para ello.

3. El comandante de la aeronave suministrará a las autoridades a las que entregue cualquier presunto delincuente de conformidad con lo previsto en el presente Artículo, las pruebas e informes que, de acuerdo con las leyes del Estado de matrícula de la aeronave, se encuentren en su posesión legítima.

Artículo 10

Por las medidas tomadas con sujeción a lo dispuesto en este Convenio, el comandante de la aeronave, los demás miembros de la tripulación, los pasajeros, el propietario, el operador de la aeronave y la persona en cuyo nombre se realice el vuelo no serán responsables en procedimiento alguno por razón de cualquier trato sufrido por la persona objeto de dichas medidas.

Capítulo IV—Apoderamiento ilícito de una aeronave**Artículo 11**

1. Cuando una persona a bordo, mediante violencia o intimidación, cometa cualquier acto ilícito de apoderamiento, interferencia, o ejercicio del control de una aeronave en vuelo, o sea inminente la realización de tales actos, los Estados Contratantes tomarán todas las medidas apropiadas a fin de que el legítimo comandante de la aeronave recobre o mantenga su control.

2. In the cases contemplated in the preceding paragraph, the Contracting State in which the aircraft lands shall permit its passengers and crew to continue their journey as soon as practicable, and shall return the aircraft and its cargo to the persons lawfully entitled to possession.

Chapter V - Powers and Duties of States

Article 12

Any Contracting State shall allow the commander of an aircraft registered in another Contracting State to disembark any person pursuant to Article 8, paragraph 1.

Article 13

1. Any Contracting State shall take delivery of any person whom the aircraft commander delivers pursuant to Article 9, paragraph 1.

2. Upon being satisfied that the circumstances so warrant, any Contracting State shall take custody or other measures to ensure the presence of any person suspected of an act contemplated in Article 11, paragraph 1 and of any person of whom it has taken delivery. 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 reasonably necessary to enable any criminal or extradition proceedings to be instituted.

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

4. Any Contracting State, to which a person is delivered pursuant to Article 9, paragraph 1, or in whose territory an aircraft lands following the commission of an act contemplated in Article 11, paragraph 1, shall immediately make a preliminary enquiry into the facts.

5. When a State, pursuant to this Article, has taken a person into custody, it shall immediately notify the State of registration of the aircraft and

2. Dans les cas visés au paragraphe précédent, tout Etat contractant où atterrit l'aéronef permet aux passagers et à l'équipage de poursuivre leur voyage aussitôt que possible. Il restitue l'aéronef et sa cargaison à ceux qui ont le droit de les détenir.

Titre V - Pouvoirs et obligations des Etats

Article 12

Tout Etat contractant doit permettre au commandant d'un aéronef immatriculé dans un autre Etat contractant de débarquer toute personne conformément aux dispositions de l'Article 8, paragraphe 1.

Article 13

1. Tout Etat contractant est tenu de recevoir une personne que le commandant d'aéronef lui remet conformément aux dispositions de l'Article 9, paragraphe 1.

2. S'il estime que les circonstances le justifient, tout Etat contractant assure la détention ou prend toutes autres mesures en vue d'assurer la présence de toute personne auteur présumé d'un acte visé à l'Article 11, paragraphe 1, ainsi que de toute personne qui lui a été remise. Cette détention et ces mesures doivent être conformes à la législation dudit Etat; elles ne peuvent être maintenues que pendant le délai nécessaire à l'engagement de poursuites pénales ou d'une procédure d'extradition.

3. Toute personne détenue en application du paragraphe précédent, peut communiquer immédiatement avec le plus proche représentant qualifié de l'Etat dont elle a la nationalité; toutes facilités lui sont accordées à cette fin.

4. Tout Etat contractant auquel une personne est remise conformément aux dispositions de l'Article 9, paragraphe 1, ou sur le territoire duquel un aéronef atterrit après qu'un acte visé à l'Article 11, paragraphe 1, a été accompli, procède immédiatement à une enquête préliminaire en vue d'établir les faits.

5. Lorsqu'un Etat a mis une personne en détention conformément aux dispositions du présent article, il avise immédiatement de cette détention, ainsi

2. En los casos previstos en el párrafo anterior, el Estado Contratante en que atterrice la aeronave permitirá que sus pasajeros y tripulantes continúen su viaje lo antes posible y devolverá la aeronave y su carga a sus legítimos poseedores.

Capítulo V - Facultades y obligaciones de los Estados

Artículo 12

Todo Estado Contratante permitirá al comandante de una aeronave matriculada en otro Estado Contratante que desembarque a cualquier persona conforme a lo dispuesto en el Artículo 8, párrafo 1.

Artículo 13

1. Todo Estado Contratante aceptará la entrega de cualquier persona que el comandante de la aeronave le entregue en virtud del Artículo 9, párrafo 1.

2. Si un Estado Contratante considera que las circunstancias lo justifican, procederá a la detención o tomará otras medidas para asegurar la presencia de cualquier persona que se presuma que ha cometido uno de los actos a que se refiere el Artículo 11, párrafo 1, así como de cualquier otra persona que le haya sido entregada. La detención y demás medidas se llevarán a cabo de acuerdo con las leyes de tal Estado, y se mantendrán solamente por el período que sea razonablemente necesario a fin de permitir la iniciación de un procedimiento penal o de extradición.

3. La persona detenida de acuerdo con el párrafo anterior tendrá toda clase de facilidades para comunicarse inmediatamente con el representante correspondiente del Estado de su nacionalidad que se encuentre más próximo.

4. El Estado Contratante al que sea entregada una persona en virtud del Artículo 9, párrafo 1, o en cuyo territorio atterrice una aeronave después de haberse cometido alguno de los actos previstos en el Artículo 11, párrafo 1, procederá inmediatamente a una investigación preliminar sobre los hechos.

5. Cuando un Estado, en virtud de este Artículo, detenga a una persona, notificará inmediatamente al Estado de matrícula de la aeronave y al Estado

the State of nationality of the detained person and, if it considers it advisable, any other interested State 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 4 of this Article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 14

1. When any person has been disembarked in accordance with Article 8, paragraph 1, or delivered in accordance with Article 9, paragraph 1, or has disembarked after committing an act contemplated in Article 11, paragraph 1, and when such person cannot or does not desire to continue his journey and the State of landing refuses to admit him, that State may, if the person in question is not a national or permanent resident of that State, return him to the territory of the State of which he is a national or permanent resident or to the territory of the State in which he began his journey by air.

2. Neither disembarkation, nor delivery, nor the taking of custody or other measures contemplated in Article 13, paragraph 2, nor return of the person concerned, shall be considered as admission to the territory of the Contracting State concerned for the purpose of its law relating to entry or admission of persons and nothing in this Convention shall affect the law of a Contracting State relating to the expulsion of persons from its territory.

Article 15

1. Without prejudice to Article 14, any person who has been disembarked in accordance with Article 8, paragraph 1, or delivered in accordance with Article 9, paragraph 1, or has disembarked after committing an act contemplated in Article 11, paragraph 1, and who desires to continue his journey shall be at liberty as soon as practicable to proceed to any destination of his choice unless his presence is required by the law of the State of landing for the purpose of extradition or criminal proceedings.

que des circonstances qui la justifient, l'Etat d'immatriculation de l'aéronef, l'Etat dont la personne détenue a la nationalité et, s'il le juge opportun, tous autres Etats intéressés. L'Etat qui procède à l'enquête préliminaire visée au présent article, paragraphe 4, en communique promptement les conclusions auxdits Etats et leur indique s'il entend exercer sa compétence.

Article 14

1. Si une personne qui a été débarquée conformément aux dispositions de l'Article 8, paragraphe 1, ou qui a été remise conformément aux dispositions de l'Article 9, paragraphe 1, ou qui a débarqué après avoir accompli un acte visé à l'Article 11, paragraphe 1, ne peut ou ne veut pas poursuivre son voyage, l'Etat d'atterrissage, s'il refuse d'admettre cette personne et que celle-ci n'ait pas la nationalité dudit Etat ou n'y ait pas établi sa résidence permanente, peut la refouler vers l'Etat dont elle a la nationalité ou dans lequel elle a établi sa résidence permanente, ou vers l'Etat sur le territoire duquel elle a commencé son voyage aérien.

2. Ni le débarquement, ni la remise, ni la détention, ni d'autres mesures, visées à l'Article 13, paragraphe 2, ni le renvoi de la personne intéressée ne sont considérés comme valant entrée sur le territoire d'un Etat contractant, au regard des lois de cet Etat relatives à l'entrée ou à l'admission des personnes. Les dispositions de la présente Convention ne peuvent affecter les lois des Etats contractants relatives au refoulement des personnes.

Article 15

1. Sous réserve des dispositions de l'article précédent, toute personne qui a été débarquée conformément aux dispositions de l'Article 8, paragraphe 1, ou qui a été remise conformément aux dispositions de l'Article 9, paragraphe 1, ou qui a débarqué après avoir accompli un acte visé à l'Article 11, paragraphe 1, et qui désire poursuivre son voyage peut le faire aussitôt que possible vers la destination de son choix, à moins que sa présence ne soit requise selon la loi de l'Etat d'atterrissage, aux fins de poursuites pénales et d'extradition.

del que sea nacional el detenido y, si lo considera conveniente, a todos los demás Estados interesados tal detención y las circunstancias que la justifican. El Estado que proceda a la investigación preliminar prevista en el párrafo 4 del presente Artículo, comunicará sin dilación sus resultados a los Estados antes mencionados e indicará si se propone proceder contra dicha persona.

Artículo 14

1. Cuando una persona, desembarcada de conformidad con el Artículo 8, párrafo 1, entregada de acuerdo con el Artículo 9, párrafo 1, o desembarcada después de haber cometido alguno de los actos previstos en el Artículo 11, párrafo 1, no pueda o no desee proseguir el viaje, el Estado de aterrizaje, si refusa admitirla y se trata de una persona que no sea nacional del mismo ni tenga en él su residencia permanente, podrá enviarla al territorio del Estado del que sea nacional o residente permanente o al del Estado donde inició su viaje aéreo.

2. El desembarque, la entrega, la detención o la adopción de las medidas aludidas en el Artículo 13, párrafo 2, o el envío de la persona conforme al párrafo anterior del presente Artículo no se considerarán como admisión en el territorio del Estado Contratante interesado a los efectos de sus leyes relativas a la entrada o admisión de personas y ninguna disposición del presente Convenio afectará a las leyes de un Estado Contratante, que regulen la expulsión de personas de su territorio.

Artículo 15

1. A reserva de lo previsto en el Artículo precedente, cualquier persona desembarcada de conformidad con el Artículo 8, párrafo 1, entregada de acuerdo con el Artículo 9, párrafo 1, o desembarcada después de haber cometido alguno de los actos previstos en el Artículo 11, párrafo 1, que desee continuar su viaje, podrá hacerlo tan pronto como sea posible hacia el punto de destino que elija, salvo que su presencia sea necesaria de acuerdo con las leyes del Estado de aterrizaje para la instrucción de un procedimiento penal o de extradición.

2. Without prejudice to its law as to entry and admission to, and extradition and expulsion from its territory, a Contracting State in whose territory a person has been disembarked in accordance with Article 8, paragraph 1, or delivered in accordance with Article 9, paragraph 1 or has disembarked and is suspected of having committed an act contemplated in Article 11, paragraph 1, shall accord to such person treatment which is no less favourable for his protection and security than that accorded to nationals of such Contracting State in like circumstances.

Chapter VI—Other Provisions

Article 16

1. Offences committed on aircraft registered in a Contracting State shall be treated, for the purpose of extradition, as if they had been committed not only in the place in which they have occurred but also in the territory of the State of registration of the aircraft.

2. Without prejudice to the provisions of the preceding paragraph, nothing in this Convention shall be deemed to create an obligation to grant extradition.

Article 17

In taking any measures for investigation or arrest or otherwise exercising jurisdiction in connection with any offence committed on board an aircraft the Contracting States shall pay due regard to the safety and other interests of air navigation and shall so act as to avoid unnecessary delay of the aircraft, passengers, crew or cargo.

Article 18

If Contracting States establish joint air transport operating organizations or international operating agencies, which operate aircraft not registered in any one State those States shall, according to the circumstances of the case, designate the State among them which, for the purposes of this Convention, shall be considered as the State of registration and shall give notice thereof to the International Civil Aviation Organization which shall communi-

2. Sous réserve de ses lois relatives à l'entrée et à l'admission, à l'extradition et au renvoi des personnes, tout Etat contractant dans le territoire duquel une personne a été débarquée conformément aux dispositions de l'Article 8, paragraphe 1, ou remise conformément aux dispositions de l'Article 9, paragraphe 1, ou qui a débarqué et à laquelle est imputé un acte visé à l'Article 11, paragraphe 1, accorde à cette personne un traitement qui, en ce qui concerne sa protection et sa sécurité, n'est pas moins favorable que celui qu'il accorde à ses nationaux dans des cas analogues.

Titre VI—Autres dispositions

Article 16

1. Les infractions commises à bord d'aéronefs immatriculés dans un Etat contractant sont considérées, aux fins d'extradition, comme ayant été commises tant au lieu de leur perpétration que sur le territoire de l'Etat d'immatriculation de l'aéronef.

2. Compte tenu des dispositions du paragraphe précédent, aucune disposition de la présente Convention ne doit être interprétée comme créant une obligation d'accorder l'extradition.

Article 17

En prenant des mesures d'enquête ou d'arrestation ou en exerçant de toute autre manière leur compétence à l'égard d'une infraction commise à bord d'un aéronef, les Etats contractants doivent dûment tenir compte de la sécurité et des autres intérêts de la navigation aérienne et doivent agir de manière à éviter de retarder sans nécessité l'aéronef, les passagers, les membres de l'équipage ou les marchandises.

Article 18

Si des Etats contractants constituent pour le transport aérien, des organisations d'exploitation en commun ou des organismes internationaux d'exploitation et si les aéronefs utilisés ne sont pas immatriculés dans un Etat déterminé, ces Etats désigneront, suivant des modalités appropriées, celui d'entre eux qui sera considéré, aux fins de la présente Convention, comme Etat d'immatriculation. Ils aviseront de cette désignation l'Organisation de l'Aviation

2. Sin perjuicio de lo dispuesto en sus leyes sobre entrada, admisión, expulsión y extradición, el Estado Contratante en cuyo territorio sea desembarcada una persona, de acuerdo con lo dispuesto en el Artículo 8, párrafo 1, o entregada de conformidad con el Artículo 9, párrafo 1, o desembarque una persona a la que se impute alguno de los actos previstos en el Artículo 11, párrafo 1, le concederá en orden a su protección y seguridad un trato no menos favorable que el dispensado a sus nacionales en las mismas circunstancias.

Capítulo VI—Otras disposiciones

Artículo 16

1. Las infracciones cometidas a bordo de aeronaves matriculadas en un Estado Contratante serán consideradas, a los fines de extradición, como si se hubiesen cometido, no sólo en el lugar en el que hayan ocurrido, sino también en el territorio del Estado de matrícula de la aeronave.

2. A reserva de lo dispuesto en el párrafo anterior, ninguna disposición de este Convenio se interpretará en el sentido de crear una obligación de conceder la extradición.

Artículo 17

Al llevar a cabo cualquier medida de investigación o arresto o al ejercer de cualquier otro modo jurisdicción en materia de infracciones cometidas a bordo de una aeronave, los Estados Contratantes deberán tener muy en cuenta la seguridad y demás intereses de la navegación aérea, evitando el retardar innecesariamente a la aeronave, los pasajeros, los miembros de la tripulación o la carga.

Artículo 18

Si varios Estados Contratantes constituyen organizaciones de explotación en común u organismos internacionales de explotación, que utilicen aeronaves no matriculadas en un Estado determinado, designarán, según las modalidades del caso, cuál de ellos se considerará como Estado de matrícula a los fines del presente Convenio y lo comunicarán a la Organización de Aviación Civil Internacional que lo notificará a todos los Estados Partes en el presente Convenio.

cate the notice to all States Parties to this Convention.

civile internationale qui en informera tous les Etats parties à la présente Convention.

Chapter VII Final Clauses

Titre VII Dispositions protocolaires

Capítulo VII--Disposiciones Finales

Article 19

Until the date on which this Convention comes into force in accordance with the provisions of Article 21, it shall remain open for signature on behalf of any State which at that date is a Member of the United Nations or of any of the Specialized Agencies.

Article 19

La présente convention, jusqu'à la date de son entrée en vigueur dans les conditions prévues à l'Article 21, est ouverte à la signature de tout Etat qui, à cette date, sera membre de l'Organisation des Nations Unies ou d'une institution spécialisée.

Artículo 19

Hasta la fecha en que el presente Convenio entre en vigor de acuerdo con lo previsto en el Artículo 21, quedará abierto a la firma de cualquier Estado que, en dicha fecha, sea miembro de la Organización de las Naciones Unidas o de cualquiera de los organismos especializados.

Article 20

1. This Convention shall be subject to ratification by the signatory States in accordance with their constitutional procedures.

2. The instruments of ratification shall be deposited with the International Civil Aviation Organization.

Article 20

1. La présente convention est soumise à la ratification des Etats signataires conformément à leurs dispositions constitutionnelles.

2. Les instruments de ratification seront déposés auprès de l'Organisation de l'Aviation civile internationale.

Artículo 20

1. El presente Convenio se someterá a la ratificación de los Estados signatarios de conformidad con sus procedimientos constitucionales.

2. Los instrumentos de ratificación serán depositados en la Organización de Aviación Civil Internacional.

Article 21

1. As soon as twelve of the signatory States have deposited their instruments of ratification of this Convention, it shall come into force between them on the ninetieth day after the date of the deposit of the twelfth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.

2. As soon as this Convention comes into force, it shall be registered with the Secretary-General of the United Nations by the International Civil Aviation Organization.

Article 21

1. Lorsque la présente convention aura réuni les ratifications de douze Etats signataires, elle entrera en vigueur entre ces Etats le quatre-vingt-dixième jour après le dépôt du douzième instrument de ratification. A l'égard de chaque Etat qui la ratifiera par la suite, elle entrera en vigueur le quatre-vingt-dixième jour après le dépôt de son instrument de ratification.

2. Dès son entrée en vigueur, la présente Convention sera enregistrée auprès du Secrétaire général de l'Organisation des Nations Unies par l'Organisation de l'Aviation civile internationale.

Artículo 21

1. Tan pronto como doce Estados signatarios hayan depositado sus instrumentos de ratificación del presente Convenio, éste entrará en vigor entre ellos el nonagésimo día, a contar del depósito del duodécimo instrumento de ratificación. Para cada uno de los Estados que ratifique después de esa fecha, entrará en vigor el nonagésimo día a partir de la fecha de depósito de su instrumento de ratificación.

2. Tan pronto como entre en vigor el presente Convenio, será registrado ante el Secretario General de las Naciones Unidas por la Organización de Aviación Civil Internacional.

Article 22

1. This Convention shall, after it has come into force, be open for accession by any State Member of the United Nations or of any of the Specialized Agencies.

2. The accession of a State shall be effected by the deposit of an instrument of accession with the International Civil Aviation Organization and shall take effect on the ninetieth day after the date of such deposit.

Article 22

1. La présente Convention sera ouverte, après son entrée en vigueur, à l'adhésion de tout Etat membre de l'Organisation des Nations Unies ou d'une institution spécialisée.

2. L'adhésion sera effectuée par le dépôt d'un instrument d'adhésion auprès de l'Organisation de l'Aviation civile internationale et prendra effet le quatre-vingt-dixième jour qui suivra la date de ce dépôt.

Artículo 22

1. Después de su entrada en vigor, el presente Convenio quedará abierto a la adhesión de cualquier Estado miembro de la Organización de las Naciones Unidas o de cualquiera de los organismos especializados.

2. La adhesión de un Estado se efectuará mediante el depósito del correspondiente instrumento de adhesión ante la Organización de Aviación Civil Internacional, el cual tendrá efecto el nonagésimo día a contar de la fecha de depósito.

Article 23

1. Any Contracting State may denounce this Convention by notification addressed to the International Civil Aviation Organization.
2. Denunciation shall take effect six months after the date of receipt by the International Civil Aviation Organization of the notification of denunciation.

Article 24

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 the 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 State 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 International Civil Aviation Organization.

Article 25

Except as provided in Article 24 no reservation may be made to this Convention.

Article 26

The International Civil Aviation Organization shall give notice to all States Members of the United Nations or of any of the Specialized Agencies:

- a) of any signature of this Convention and the date thereof;

Article 23

1. Tout Etat contractant peut dénoncer la présente Convention par une notification faite à l'Organisation de l'Aviation civile internationale.
2. La dénonciation prendra effet six mois après la date de réception de la notification par l'Organisation de l'Aviation civile internationale.

Article 24

1. Tout différend entre des Etats contractants concernant l'interprétation ou l'application de la présente Convention qui ne peut pas être réglé par voie de négociation est soumis à l'arbitrage, à la demande de l'un d'entre eux. Si, dans les six mois qui suivent la date de la demande d'arbitrage, les Parties ne parviennent pas à se mettre d'accord sur l'organisation de l'arbitrage, l'une quelconque d'entre elles peut soumettre le différend à la Cour internationale de Justice, en déposant une requête conformément au Statut de la Cour.

2. Chaque Etat pourra, au moment où il signera ou ratifiera la présente Convention ou y adhèrera, déclarer qu'il ne se considère pas lié par les dispositions du paragraphe précédent. Les autres Etats contractants ne seront pas liés par lesdites dispositions envers tout Etat contractant qui aura formulé une telle réserve.

3. Tout Etat contractant qui aura formulé une réserve conformément aux dispositions du paragraphe précédent pourra à tout moment lever cette réserve par une notification adressée à l'Organisation de l'Aviation civile internationale.

Article 25

Sauf dans le cas prévu à l'Article 24, il ne sera admis aucune réserve à la présente Convention.

Article 26

L'Organisation de l'Aviation civile internationale notifiera à tous les Etats membres de l'Organisation des Nations Unies ou d'une institution spécialisée:

- a) toute signature de la présente Convention et la date de cette signature;

Artículo 23

1. Los Estados Contratantes podrán denunciar este Convenio notificándolo a la Organización de Aviación Civil Internacional.
2. La denuncia surtirá efecto seis meses después de la fecha en que la Organización de Aviación Civil Internacional reciba la notificación de dicha denuncia.

Artículo 24

1. Las controversias que surjan entre dos o más Estados Contratantes con respecto a la interpretación o aplicación de este Convenio, que no puedan solucionarse mediante negociaciones, se someterán a arbitraje, a petición de uno de ellos. Si en el plazo de seis meses contados a partir de la fecha de presentación de la solicitud de arbitraje las partes no consiguen ponerse de acuerdo sobre la forma del mismo, cualquiera de las partes podrá someter la controversia a la Corte Internacional de Justicia, mediante una solicitud presentada de conformidad con el Estatuto de la Corte.

2. Todo Estado, en el momento de la firma o ratificación de este Convenio o de su adhesión al mismo, podrá declarar que no se considera obligado por el párrafo anterior. Los demás Estados Contratantes no estarán obligados por el párrafo anterior ante ningún Estado que haya formulado dicha reserva.

3. Todo Estado Contratante que haya formulado la reserva prevista en el párrafo anterior podrá retirarla en cualquier momento notificándolo a la Organización de Aviación Civil Internacional.

Artículo 25

Con excepción de lo dispuesto en el Artículo 24, el presente Convenio no podrá ser objeto de reservas.

Artículo 26

La Organización de Aviación Civil Internacional notificará a todos los Estados miembros de la Organización de las Naciones Unidas o de cualquiera de los organismos especializados:

- a) toda firma del presente Convenio y la fecha de la misma;

- | | | |
|--|---|---|
| <p>b) of the deposit of any instrument of ratification or accession and the date thereof;</p> <p>c) of the date on which this Convention comes into force in accordance with Article 21, paragraph 1;</p> <p>d) of the receipt of any notification of denunciation and the date thereof; and</p> <p>e) of the receipt of any declaration or notification made under Article 24 and the date thereof.</p> | <p>b) le dépôt de tout instrument de ratification ou d'adhésion et la date de ce dépôt;</p> <p>c) la date à laquelle la présente Convention entre en vigueur conformément aux dispositions du paragraphe 1^{er} de l'Article 21;</p> <p>d) la réception de toute notification de dénonciation et la date de réception; et</p> <p>e) la réception de toute déclaration ou notification faite en vertu de l'Article 24 et la date de réception.</p> | <p>b) el depósito de todo instrumento de ratificación o adhesión y la fecha en que se hizo;</p> <p>c) la fecha en que el presente Convenio entre en vigor de acuerdo con el primer párrafo del Artículo 21;</p> <p>d) toda notificación de denuncia y la fecha de su recepción; y</p> <p>e) toda declaración o notificación formulada en virtud del Artículo 24 y la fecha de su recepción.</p> |
|--|---|---|

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

DONE at Tokyo on the fourteenth day of September One Thousand Nine Hundred and Sixty-three in three authentic texts drawn up in the English, French and Spanish languages.

This Convention shall be deposited with the International Civil Aviation Organization with which, in accordance with Article 19, it shall remain open for signature and the said Organization shall send certified copies thereof to all States Members of the United Nations or of any Specialized Agency.

EN FOI DE QUOI les Plénipotentiaires soussignés, dûment autorisés, ont signé la présente Convention.

FAIT à Tokyo le quatorzième jour du mois de septembre de l'an mil neuf cent soixante-trois, en trois textes authentiques rédigés dans les langues française, anglaise et espagnole.

La présente Convention sera déposée auprès de l'Organisation de l'Aviation civile internationale où, conformément aux dispositions de l'Article 19, elle restera ouverte à la signature et cette Organisation transmettra des copies certifiées conformes de la présente Convention à tous les Etats membres de l'Organisation des Nations Unies ou d'une institution spécialisée.

EN TESTIMONIO DE LO CUAL, los plenipotenciarios que suscriben, debidamente autorizados, firman el presente Convenio.

HECHO en Tokio el día catorce de septiembre de mil novecientos sesenta y tres, en tres textos auténticos, redactados en los idiomas español, francés e inglés.

El presente Convenio será depositado en la Organización de Aviación Civil Internacional, donde quedará abierto a la firma, de conformidad con el Artículo 19, y dicha Organización transmitirá copias legalizadas del mismo a todos los Estados miembros de la Organización de las Naciones Unidas o de cualquiera de los organismos especializados.

CONGO (BRAZZAVILLE)

F. OLLA

FEDERAL REPUBLIC OF GERMANY

Herbert Thunau
Heinrich Götting

GUATEMALA

~~*Guatemala*~~

HOLY SEE

Suemasa Okamoto

INDONESIA

S. Riemboorn

ITALY

A. Ambrosini

Salvatore Cacopardo

JAPAN

Shino Saito

LIBERIA

Albert C. ...

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PANAMA

[Signature] *Charles A. ...*

PHILIPPINES

M. ...
Francisco ... *Jun ...*
... *...*

REPUBLIC OF CHINA

W. ...
Sai-Tai Chow

REPUBLIC OF THE UPPER VOLTA

[Signature]
F. OLLISSA

SWEDEN

Karl Sidenbladt

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Richard Wilberforce
Arnold Kean
Fred Burrows.

UNITED STATES OF AMERICA

Robert P. Boyle

YUGOSLAVIA

Dr. ...
ad referendum

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FINAL ACT

of the International Conference
on Air Law
held under the auspices of
the International Civil Aviation
Organization at Tokyo in
August-September 1963

The Delegates at the International Conference on Air Law held under the auspices of the International Civil Aviation Organization met at Tokyo, on the invitation of the Government of Japan, from 20 August to 14 September 1963, for the purpose of considering a draft convention on offences and certain other acts committed on board aircraft, prepared by the Legal Committee of the International Civil Aviation Organization.

The Governments of sixty-one States were represented at the Conference, as follows:

ACTE FINAL

de la Conférence internationale
de droit aérien
tenue sous les auspices
de l'Organisation de l'aviation
civile internationale
à Tokyo
en août-septembre 1963

Les délégués à la Conférence internationale de droit aérien, tenue sous les auspices de l'Organisation de l'aviation civile internationale, se sont réunis à Tokyo, sur l'invitation du Gouvernement japonais, du 20 août au 14 septembre 1963, afin d'examiner un projet de convention relative aux infractions et à certains autres actes survenant à bord des aéronefs, préparé par le Comité juridique de l'Organisation de l'aviation civile internationale.

Les gouvernements de 61 Etats étaient représentés à la conférence comme il suit:

ACTA FINAL

de la Conferencia Internacional
de Derecho Aéreo
celebrada bajo los auspicios de
la Organización de Aviación Civil
Internacional en Tokio en
agosto-septiembre de 1963

Los delegados asistentes a la Conferencia Internacional de Derecho Aéreo celebrada bajo los auspicios de la Organización de Aviación Civil Internacional se reunieron en Tokio, invitados por el Gobierno del Japón, del 20 de agosto al 14 de septiembre de 1963, con objeto de considerar el proyecto de Convenio sobre las infracciones y ciertos otros actos cometidos a bordo de las aeronaves, preparado por el Comité Jurídico de la Organización de Aviación Civil Internacional.

Estuvieron representados en la Conferencia los Gobiernos de los sesenta y un Estados siguientes:

Afghanistan
Afghanistan

M. M.A. OZOD SERADJ, Directeur général de l'Aviation civile, *Chef de délégation*.
M. M.I. NAWASSAN, Directeur du Service des Lois et Réglementations à l'Aviation civile, *Délégué*.

Argentina
Argentine
Argentina

Sr. R.J. SALAS, Agregado Aeronáutico a la Embajada Argentina—Japón, *Jefe de delegación*.
Sr. M.J. TORTOSA, Auxiliar Agregación Aeronáutica, *Asesor*.
Sr. R.P. QUADRI, Agregado Embajada Argentina, Tokio, *Delegado*.

Australia
Australie
Australia

Mr. K.S. EDMUNDS, Assistant Secretary, Attorney-General's Department, *Chief of Delegation*.
Mr. L.R. EDWARDS, Assistant Crown Solicitor (Civil Aviation), *Delegate*.

Austria
Autriche
Austria

His Exc. F. HARTLMAYR, Austrian Ambassador to Japan, *Chief of Delegation*.
Mr. K.R. ZIEGLER, Second Secretary, Austrian Embassy, Tokyo, *Alternate*.
Mr. J.F. BAUER, Secretary (Administration) of Austrian Embassy, Tokyo, *Alternate*.

Belgium
Belgique
Bélgica

M. R. GOLSTEIN, Chargé de Cours Honoraire à l'Université de Bruxelles, *Chef de délégation*.
M. J. VERSTAPPEN, Secrétaire d'Administration, *Délégué*.

Bolivia
Bolivie
Bolivia

Sr. J. ESPAÑA, Ministro-Consejero Embajada de Bolivia, Tokio, *Jefe de delegación*.

Brazil
Brésil
Brasil

Mr. J.M.O. SIDOU, University Professor, Advocate, *Delegate*.

Byelorussian Soviet Socialist Republic
République Socialiste Soviétique de Biélorussie
República Socialista Soviética de Bielorrusia

Mr. G. BASSOV, Chief of the Legal Committee of the Council of Ministers of the BSSR, *Chief of Delegation*.
Mr. J. KOUROV, Attaché, Embassy of the USSR in Japan, *Adviser*.

Cambodia
Cambodge
Camboya

M. T. PENN, Attaché Commercial, Ambassade Royale du Cambodge, *Observateur*.

Canada
Canadá

Mr. G. SICOTTE, Head, Legal Division, Department of External Affairs, *Chief of Delegation*.
Mr. I.E. McPHERSON, General Attorney, Trans Canada Airlines, *Delegate*.
Mr. J.F. CLARK, Senior Solicitor, Canadian Pacific Airlines, *Delegate*.
Mr. M.F. BILD, Third Secretary, Canadian Embassy, Tokyo, *Secretary*.

Ceylon
Ceylan
Ceilán

Mr. S.S. WIJESINHA, Crown Counsel, (Assistant to the Attorney General), *Chief of Delegation*.

Chile
Chili
Chile

Sr. J. ANSTED, Abogado de la Junta de Aeronáutica Civil, *Jefe de delegación*

Colombia
Colombie
Colombia

Excmo. Sr. H. MOLANO-CAMPUZANO, Embajador de Colombia en el Japón, *Jefe de delegación*.
Sr. F. GAITAN-DE-NARVÁEZ, Ministro Consejero, Embajada de Colombia, Tokio, *Delegado*.

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Congo (Brazzaville)

M. F.X. OLLASSA, **Représentant du Congo (Brazzaville)** au Conseil de l'Organisation de l'Aviation civile internationale, *Chef de délégation*.

Costa Rica

Sr. G. GAGO, **Consul General de Costa Rica** en el Japón, *Jefe de delegación*.

Cuba

Excmo. Sr. G. LEON **ANTICH**, **Embajador de Cuba** en el Japón, *Observador*.

Ecuador**Equateur****Ecuador**

Sr. J. AYALA-LASSO, **Secretario de la Embajada** en el Japón, *Observador*.

Federal Republic of Germany
République Fédérale d'Allemagne
República Federal de Alemania

Dr. H. GRÜTZNER, **Chef de la Division pour les affaires pénales internationales** au Ministère fédéral de la Justice, *Chef de délégation*.

Dr. G. SCHMIDT-RÄNTSCH, **Chief of Air Law Section** in the Federal Ministry of Justice, *Delegate*.

Mr. G. VAN WELL, **First Secretary of Embassy**, *Delegate*.

Mr. R. BENNING, **Counsellor in the Ministry of Transport**, *Delegate*.

Finland**Finlande****Finlandia**

Mr. M. LINTULAHTI, **First Secretary of Embassy**, Tokyo, *Observer*.

France**Francia**

M. A. FÉQUANT, **Chargé d'Affaires P.I. de France** au Japon, *Chef de délégation*.

M. A. GARNAULT, **Avocat à la Cour d'Appel de Paris**, **Avocat Conseil du Ministère des Affaires Etrangères**, *Vice-Président de délégation*.

M. P. FRANCK, **Magistrat au Ministère de la Justice**, Paris, *Délégué*.

M. J. DARRAS, **Conseiller des Affaires Administratives à la Direction des Transports Aériens du Secrétariat Général à l'Aviation Civile**, *Délégué*.

M. G. JULIENNE, **Secrétaire à l'Ambassade de France à Tokyo**, *Délégué*.

Greece**Grèce****Grecia**

Mr. C. HADJIDIMOULAS, **Attorney at Law**, *Chief of Delegation*.

Mr. N. DIAMANTOPOULOS, **Secretary of the Royal Greek Embassy in Tokyo**, *Delegate*.

Guatemala

Sr. F. JUÁREZ RODAS, **Viceministro de Hacienda y Presidente de la Junta de Aviación Civil**, *Jefe de delegación*.

Holy See**Saint-Siège****Santa Sede**

Mr. S. OKAMOTO, **Former Japanese Ambassador**, *Chief of Delegation*.

Hungarian People's Republic
République Populaire Hongroise
República Popular Húngara

His Exc. A. ZALKA, Minister of Hungary to Japan, *Chief of Delegation*.
Dr. F. MAJOROS, Legal Adviser to the Board of Civil Aviation of Ministry of Communications and Posts, *Delegate*.
Mr. L. HÁBS, Counsellor of the Legation of the Hungarian People's Republic, *Alternate*.

India
Inde
India

Mr. B.S. GIDWANI, Director of Regulations and Information, Civil Aviation Department, Ministry of Transport and Communications, *Chief of Delegation*.

Indonesia
Indonésie
Indonesia

Mr. G. RISAKOTTA, Secretary to the Minister of Air Communications, *Chief of Delegation*.

Iraq
Irak

Mr. K. DAGHISTANI, Chargé d'Affaires, Embassy of Irak in Japan, *Chief of Delegation*.

Italy
Italie
Italia

M. A. AMBROSINI, Professeur à l'Université de Rome, *Chief de délégation*.
M. R. MONACO, Jurisconsulte du Ministère des Affaires Etrangères, *Délégué*.
M. S. CACOPARDO, Président de Chambre honoraire du Conseil d'Etat, *Délégué*.

Ivory Coast
Côte-d'Ivoire
Costa de Marfil

M. S. DOAMBA, Secrétaire d'Ambassade, *Chief de délégation*.

Japan
Japon
Japón

His Exc. S. SAITO, Minister, Embassy of Japan in Thailand, *Chief of Delegation*.
Mr. R. SUNOBE, Counsellor, Treaties Bureau, Ministry of Foreign Affairs, *Delegate*.
Mr. T. TSUJI, Chief, General Affairs Section, Criminal Affairs Bureau, Ministry of Justice, *Delegate*.
Mr. S. SUZUKI, Chief, International Affairs Division, Civil Aviation Bureau, Ministry of Transportation, *Delegate*.
Mr. S. TOKUHISA, Chief, International Conventions Section, Treaties Bureau, Ministry of Foreign Affairs, *Delegate*.
Mr. H. YAMAGUCHI, Chief, Status Section, Immigration Bureau, Ministry of Justice, *Delegate*.
Mr. S. ITO, Legal Counsellor, Criminal Affairs Bureau, Ministry of Justice, *Alternate*.
Mr. N. NAKANO, Secretary, International Conventions Section, Treaties Bureau, Ministry of Foreign Affairs, *Alternate*.
Mr. K. SAKAUE, Chief, Information and Liaison Office, Ministry of Justice, *Alternate*.
Mr. Y. ITO, Secretary, International Affairs Division, Civil Aviation Bureau, Ministry of Transportation, *Alternate*.
Dr. R. HIRANO, Professor, Tokyo University, *Adviser*.
Dr. M. YAZAWA, Professor, Tokyo University, *Adviser*.
Mr. Y. TAKAGI, Vice President, Japan Air Lines Co., Ltd., *Adviser*.
Mr. S. IWAI, Secretary, Economic and Social Section, United Nations Bureau, Ministry of Foreign Affairs, *Adviser*.

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Kuwait
Koweit
Kuwait

Mr. N.A. SHUAIB, *First Secretary, Embassy of the State of Kuwait in Japan, Chief of Delegation.*
Mr. S. SHIBER, *Advisor, Planning Consultant, Government of Kuwait, Adviser.*

Laos

Mr. T.K. BOUTSAVATH, *Member of the Laotian Embassy, Tokyo, Observer.*

Liberia
Libéria
Liberia

Mr. A. CORVAH, *Assistant to the Civil Aviation Adviser, Chief of Delegation.*

Mexico
Mexique
México

Sr. J. ROJAS, *Consejero, Embajada de México en Tokio, Observador.*

Netherlands
Pays-Bas
Países Bajos

M. L. HULSMAN, *Conseiller général, Ministère de la Justice, Chef de délégation.*
Mr. J.P. HONIG, *Legal Advisor, Civil Aviation Department, Delegate.*
M. G. HUBÉE, *Conseiller juridique, Ministère des Affaires Etrangères, Délégué.*

Nicaragua

Excmo. Sr. H. ARGÜELLO-TEFEL, *Enviado Extraordinario y Ministro Plenipotenciario de Nicaragua en el Japón, Jefe de delegación.*

Nigeria
Nigéria
Nigeria

Hon. M.T. MBU, *Minister of State, Chief of Delegation.*
Mr. S.D. ADEBIYI, *Deputy Solicitor-General, Delegate.*
Mr. S.O. OKUNRIBIDO, *Crown Law Officer, Delegate.*
Mr. F.M.C. OBI, *Head of Economic Division, Ministry of Foreign Affairs, Lagos, Delegate.*
Mr. J.N. DAMBO, *Senior Assistant Secretary, Delegate.*
Mr. C. ONAH, *Private Secretary.*
Miss T.O. EPEGA, *Secretary.*

Norway
Norvège
Noruega

Mr. C. STABEL, *Justice of the Supreme Court, Chief of Delegation.*

Pakistan
Pakistán

Mr. S.M. KORESHI, First Secretary and Chargé d'Affaires of Pakistan, *Observer*.

Panama
Panamá

Excmo. Sr. J.F. FRANCO, Doctor en Ciencias Jurídicas y Económicas, Embajador en Misión Especial, *Jefe de delegación*.

Excmo. Sr. O.A. ROSAS, Embajador en Misión Especial, Miembro de la Junta Nacional de Aeronáutica Civil, *Delegado*.

Peru
Pérou
Perú

Excmo. Sr. A. PONCE, Embajador del Perú en Tokio, *Observador*.

Sr. A. DIEZ CANSECO, Secretario, Embajada del Perú, *Observador*.

Philippines
Filipinas

His Exc. M. MENDEZ, Ambassador of the Philippines in Japan, *Chief of Delegation*.

Mr. J.B. DIAZ, Senior Executive Assistant, Civil Aeronautics Administration, *Delegate*.

Mr. E.J. DE LA ROSA, Executive Director, Civil Aeronautics Board, *Delegate*.

Mr. J. PLANA, Executive Officer, Department of Foreign Affairs, *Delegate*.

Polish People's Republic
République Populaire de Pologne
República Popular de Polonia

His Exc. T. ZEBROWSKI, Ambassador of Poland in Tokyo, *Chief of Delegation*.

Dr. J. BURIK, Chief of Division, Ministry of Transport, *Delegate*.

Mme K.M. MISZEWSKA, Conseiller juridique au Département de l'Aviation civile, Ministère des Communications, *Déléguée*.

Mr. S. SKOWRON, *Secretary*.

Portugal

Mr. F.P.D. SANTOS, Secretary to the Portuguese Embassy in Japan, *Delegate*.

Republic of China
République de Chine
República de China

Mr. H.Y. LAI, Director of Civil Aviation Administration, *Chief of Delegation*.

Mr. S.T. CHOW, Chief Counsellor of Ministry of Justice, *Delegate*.

Mr. H.M. LIN, First Secretary, Chinese Embassy, Tokyo, *Adviser*.

Mr. P.C. CHEN, Treaty Department, Ministry of Foreign Affairs, *Secretary*.

Republic of Haiti
République d'Haïti
República de Haití

M. J.L. MONTES, Avocat Conseil du Département du Commerce et de l'Industrie, *Chef de délégation*.

Republic of Korea
République de Corée
República de Corea

Mr. M.Y. RHIE, First Secretary, Korean Mission in Japan, *Chief of Delegation*.
 Mr. K.S. CHOI, Second Secretary, Korean Mission in Japan, *Alternate*.
 Mr. H.J. CHOI, Second Secretary, Korean Mission in Japan, *Alternate*.

Republic of Mali
République du Mali
República de Mali

M. Y. KOUYATE, Premier Secrétaire d'Ambassade, *Chief de délégation*.

Republic of the Upper Volta
République de Haute-Volta
República del Alto Volta

Mr. I.A. KONE, Embassy of the Republic of Upper Volta in Japan, *Chief of Delegation*.

Rumanian People's Republic
République Populaire de Roumanie
República Popular de Rumanía

Mr. I. TOMESCU, Third Secretary of Rumanian Legation in Japan, *Observer*.
 Mr. N. ION, Third Secretary of Rumanian Legation in Japan, *Observer*.

Senegal
Sénégal
Senegal

M. E.J.L. BRAURE, Docteur en Droit, *Chief de délégation*.

Spain
Espagne
España

Sr. C. GÓMEZ JARA, Asesor Jurídico, Ministerio del Aire, *Jefe de delegación*.
 Sr. R. ZAERA, Primer Secretario de la Embajada de España en Tokio, *Delegado*.

Sweden
Suède
Suecia

Mr. K. SIDENBLADH, President, Court of Appeal, *Chief of Delegation*.

Switzerland
Suisse
Suiza

M. W. GULDIMANN, Docteur en droit et avocat à Zurich, *Chief de délégation*.
 M. F. SCHAERER, Docteur en droit et avocat, Chargé des Relations internationales à l'Office fédéral de l'Air, *Délégué*.
 M. C. MARKEES, Docteur en droit et avocat, Adjoint à la Division de Police du Département fédéral de Justice et Police, Chef du Service d'extradition et de l'entraide judiciaire internationale, *Délégué*.

Ukrainian Soviet Socialist Republic
République Socialiste Soviétique d'Ukraine
República Socialista Soviética de Ucrania

Mr. N. KOVTIOUKH, Chief of the Ukrainian Department, Civil Aviation Administration under the Council of Ministers of the USSR, *Chief of Delegation*.
Mr. A. PROKHOJEV, Attaché, Embassy of the USSR in Japan, *Adviser*.

Union of Soviet Socialist Republics
Union des Républiques Socialistes Soviétiques
Unión de Repúblicas Socialistas Soviéticas

Mr. V. DANILICHEV, Chief of International Air Services Department, Civil Aviation Administration under the Council of Ministers of the USSR, *Chief of Delegation*.
Mr. G. VILKOV, Deputy Chief of the Treaties Department, Ministry of Foreign Affairs of the USSR, *Deputy Chief of Delegation*.
Mr. G. GRJAZNOV, Senior Legal Adviser, International Air Services Department, Civil Aviation Administration under the Council of Ministers of the USSR, *Delegate*.
Mr. G. USACHEV, Referent of International Air Services Department, Civil Aviation Administration under the Council of Ministers of the USSR, *Adviser*.

United Arab Republic
République Arabe Unie
República Árabe Unida

Mr. M. ABDEL RAZEK, First Secretary, United Arab Republic Embassy in Tokyo, *Delegate*.
Mr. E.A. IBRAHIM, Counsellor of United Arab Republic Embassy in Tokyo, *Delegate*.
Mr. M.M. EL MAHDY, Third Secretary, United Arab Republic Embassy in Tokyo, *Delegate*.

United Kingdom of Great Britain and Northern Ireland
Royaume-Uni de Grande-Bretagne et d'Irlande du Nord
Reino Unido de Gran Bretaña e Irlanda del Norte

The Honourable Sir Richard WILBERFORCE, one of Her Majesty's Judges, *Chief of Delegation*.
Mr. A.W.G. KEAN, Assistant Solicitor for the Affairs of Her Majesty's Treasury, *Delegate*.
Mr. F. BURROWS, Member of Her Majesty's Foreign Service, *Delegate*.

United States of America
Etats-Unis d'Amérique
Estados Unidos de América

Mr. Robert P. BOYLE, Deputy Assistant Administrator, International Aviation Affairs, Federal Aviation Agency, U.S.A., *Chief of Delegation*.
Mr. J.H. WANNER, General Counsel, Civil Aeronautics Board, *Delegate*.
Mr. C. WADE, State Senator, (Attorney-at-Law), *Delegate*.
Mr. A.I. MENDELSON, Attorney, U.S. Department of State, *Delegate*.
Mr. J.E. STEPHEN, General Counsel, Air Transport Association of America, *Adviser*.

Venezuela

Excmo. Sr. C. RODRÍGUEZ-JIMÉNEZ, Embajador de Venezuela en Japón, *Jefe de delegación*.
Sr. F. ZERRES, Secretario de la Embajada de Venezuela en Japón, *Asesor*.

Yugoslavia
Yugoslavie
Yugoslavia

Mr. B. ZLATARIĆ, University Professor, *Chief of Delegation*.
Mr. R. RADOSAVLJEVIĆ, Chef du Département pour les Affaires Etrangères de la Direction générale de l'Aéronautique civile, *Délégué*.

Five international organizations were represented at the Conference, as follows:

Cinq organisations internationales étaient représentées à la conférence comme il suit:

También estuvieron representados los cinco organismos internacionales siguientes:

**International Air Transport Association
Association du Transport Aérien International
Asociación de Transporte Aéreo Internacional**

Mr. J.G. GAZDIK, Advocate, Montreal Bar, Secretary of Legal Committee, International Air Transport Association, *Observer*.

**International Chamber of Commerce
Chambre de Commerce Internationale
Cámara Internacional de Comercio**

Mr. K. SAKITA, Assistant to President, Japan Air Lines, *Observer*.
Mr. F. ISOMURA, Section Chief, Planning and Research Department, Japanese National Committee, *Observer*.

**International Federation of Airline Pilots' Associations
Fédération internationale des Associations de Pilotes de Ligne
Federación Internacional de Asociaciones de Pilotos de Líneas Aéreas**

Mr. A.J. LAURIE, *Observer*.
Mr. T. NISHIGORI, Secretary, Japan Airlines Pilot Union, *Observer*.

**International Institute for the Unification of Private Law
Institut International pour l'Unification du Droit privé
Instituto Internacional para la Unificación del Derecho Privado**

M. R. MONACO, *Observateur*.

**International Law Association
Association de Droit International
Asociación de Derecho Internacional**

Mr. Y. TAKANO, Director of Japan Branch of the International Law Association, *Observer*.

The Conference elected as President His Exc. Shizuo Saito, Chief of the Delegation of Japan, and further elected as Vice-Presidents Messrs. F. Juárez Rodas (Guatemala), A. Zalka (Hungary), B.S. Gidwani (India), Hon. M. T. Mbu (Nigeria) and Dr. W. Guldemann (Switzerland).

The Secretariat included:

Mr. P.K. Roy, Director of the Legal Bureau of the International Civil Aviation Organization, as Secretary General of the Conference. Dr. G.F. FitzGerald, Senior Legal Officer of the Organization, Dr. G. Bonilla, Dr. R.H. Mankiewicz and Dr. L. Aillaud, Legal Officers of the Organization, as Secretaries of the Conference. Mr. C. Van Diest, Senior Finance Officer of the Organization, was Administrative Officer of the Conference. Dr. N. Jané was in charge of

La conférence a élu président S.E. M. Shizuo Saito, chef de la délégation japonaise, et vice-présidents MM. F. Juárez Rodas (Guatemala), A. Zalka (Hongrie), B.S. Gidwani (Inde), l'honorable M.T. Mbu (Nigéria) et W. Guldemann (Suisse).

Le secrétariat comprenait M. P.K. Roy, directeur des Affaires juridiques de l'OACI, Secrétaire général de la conférence; MM. G.F. FitzGerald, expert juridique principal de l'OACI, G. Bonilla, R.H. Mankiewicz et L. Aillaud, experts juridiques de l'OACI, secrétaires de la conférence; M. C. Van Diest, administrateur principal à la Sous-direction des finances de l'OACI, administrateur de la conférence. M. N. Jané, dirigeait les services linguistiques avec l'assistance de M. F. Cordier,

La Conferencia nombró Presidente al Excmo. Sr. Shizuo Saito, Jefe de la Delegación del Japón, y Vicepresidentes a los Señores F. Juárez Rodas (Guatemala), A. Zalka (Hungría), B.S. Gidwani (India), al Hon. M.T. Mbu (Nigeria) y al Dr. W. Guldemann (Suiza).

La Secretaría estaba integrada por el señor P. K. Roy, Director de la Asesoría Jurídica de la Organización de Aviación Civil Internacional, Secretario General de la Conferencia; Dr. G. F. FitzGerald, Asesor Jurídico Principal de la Organización; Dr. G. Bonilla, Dr. R. H. Mankiewicz y Dr. L. Aillaud, asesores jurídicos de la Organización y secretarios de la Conferencia; Sr. C. Van Diest, Administrador Principal de la Organización, encargado de los Servicios Administrativos de la Con-

language services, assisted by Mr. F. Cordier, Chief Interpreter.

As Liaison Officer appointed by the Government of Japan, Mr. S. Yamanaka, Chief, Economic and Social Section, United Nations Bureau, Ministry of Foreign Affairs of Japan, directed other Conference services.

The Conference established a Credentials Committee, a Committee on Rules of Procedure, a Drafting Committee, a Committee on Final Clauses, a Committee on Article 10, and a Working Group on part of Article 1, paragraph 1, to which the following Delegations were appointed by the Conference:

CREDENTIALS COMMITTEE

Afghanistan, represented by Mr. M.A. Ozod Seradj,
 Canada, represented by Mr. G. Sicotte,
 Italy, represented by Mr. S. Cacopardo,
 Panama, represented by Mr. J.F. Franco,
 Senegal, represented by Mr. E.J.L. Braure.
 Mr. J.F. Franco (Panama) served as Chairman of the Committee.

COMMITTEE ON RULES OF PROCEDURE

Argentina, represented by Mr. R.J. Salas,
 Australia, represented by Messrs. K.S. Edmunds and L.R. Edwards,
 Ceylon, represented by Mr. S.S. Wijesinha,
 Congo (Brazzaville), represented by Mr. F.X. Ollassa,
 Greece, represented by Messrs. C. Hadjidimoulas and N. Diamantopoulos,
 Polish People's Republic, represented by Dr. T. Zebrowski,
 United Arab Republic, represented by Mr. E.A. Ibrahim.
 Mr. K.S. Edmunds (Australia) served as Chairman of the Committee.

DRAFTING COMMITTEE

Congo (Brazzaville), represented by Mr. F.X. Ollassa,

interprète principal.

M. S. Yamanaka, chef de la Section économique et sociale du Bureau des Nations Unies au ministère des Affaires étrangères, nommé par le Gouvernement japonais chef du Service de liaison, a dirigé d'autres services de la conférence.

La conférence a institué un Comité de vérification des pouvoirs, un Comité du règlement intérieur, un Comité de rédaction, un Comité des dispositions protocolaires, un Comité de l'article 10 et un Groupe d'étude d'une partie du paragraphe 1 de l'Article 1^{er}. Elle a nommé membres de ces organes les délégations suivantes:

COMITE DE VERIFICATION DES POUVOIRS

Afghanistan, représenté par M. M.A. Ozod Seradj,
 Canada, représenté par M. G. Sicotte,
 Italie, représentée par M. S. Cacopardo,
 Panama, représenté par M. J.F. Franco,
 Sénégal, représenté par M. E.J.L. Braure.
 M. J.F. Franco (Panama) a présidé le comité.

COMITE DU REGLEMENT INTERIEUR

Argentine, représentée par M. R.J. Salas,
 Australie, représentée par MM. K.S. Edmunds et L.R. Edwards,
 Ceylan, représenté par M. S.S. Wijesinha,
 Congo (Brazzaville), représenté par M. F.X. Ollassa,
 Grèce, représentée par MM. C. Hadjidimoulas et N. Diamantopoulos,
 République populaire de Pologne, représentée par M. T. Zebrowski,
 République Arabe Unie, représentée par M. E.A. Ibrahim.
 M. K.S. Edmunds (Australie) a présidé le comité.

COMITE DE REDACTION

Congo (Brazzaville), représenté par M. F.X. Ollassa,

ferencia; Dr. N.R. Jané a cargo de los Servicios de Idiomas, ayudado por el Sr. F. Cordier, Jefe de Intérpretes.

El Gobierno del Japón nombró Oficial de Enlace al señor S. Yamanaka, Jefe de la Sección Económica y Social de la Oficina de las Naciones Unidas del Ministerio de Asuntos Exteriores del Japón, quien tuvo a su cargo otros servicios de la Conferencia.

La Conferencia constituyó un Comité de Credenciales, un Comité del Reglamento Interno, un Comité de Redacción, un Comité de Disposiciones Finales, un Comité del Artículo 10 y un Grupo de Estudio encargado de examinar una parte del Artículo 1, párrafo 1, para los cuales la Conferencia nombró las delegaciones siguientes:

COMITE DE CREDENCIALES

Afganistán representado por el Sr. M.A. Ozod Seradj,
 Canadá, representado por el Sr. G. Sicotte,
 Italia, representada por el Sr. S. Cacopardo,
 Panamá, representado por el Sr. J.E. Franco,
 Senegal, representado por el Sr. E.J.L. Braure.
 El Sr. J.F. Franco (Panamá) actuó como Presidente del Comité.

COMITE DEL REGLAMENTO INTERNO

Argentina, representada por el Sr. R.J. Salas,
 Australia, representada por los Sres. K.S. Edmunds y L.R. Edwards,
 Ceilán, representado por el Sr. S.S. Wijesinha,
 Congo (Brazzaville), representado por el Sr. F.X. Ollassa,
 Grecia, representada por los Sres. C. Hadjidimoulas y N. Diamantopoulos,
 República Popular de Polonia, representada por el Dr. T. Zebrowski,
 República Arabe Unida, representada por el Sr. E.A. Ibrahim.
 El Sr. K.S. Edmunds actuó como Presidente del Comité.

COMITE DE REDACCION

Congo (Brazzaville), representado por el Sr. F.X. Ollassa,

France, represented by Mr. P. Franck,
 Nigeria, represented by Mr. S. O. Okunribido,
 Spain, represented by Mr. C. Gómez Jara,
 Sweden, represented by Mr. K. Sidenbladh,
 Union of Soviet Socialist Republics, represented by Mr. G. Grjaznov,
 United Kingdom, represented by Messrs. A.W.G. Kean and F. Burrows,
 United States of America, represented by Mr. R.P. Boyle,
 Venezuela, represented by Mr. C. Rodríguez-Jiménez.
 Mr. K. Sidenbladh (Sweden) served as Chairman of the Committee.

COMMITTEE ON FINAL CLAUSES

Argentina, represented by Mr. Ricardo P. Quadri,
 Belgium, represented by Mr. J. Verstappen,
 Federal Republic of Germany, represented by Mr. G. Van Well,
 France, represented by Mr. G. Julienne,
 Japan, represented by Mr. N. Nakano,
 Netherlands, represented by Mr. G. Hubée,
 Senegal, represented by Mr. E.J.L. Braure,
 Union of Soviet Socialist Republics, represented by Mr. G. Vilkov,
 United Kingdom, represented by Mr. F. Burrows,
 United States of America, represented by Mr. A.I. Mendelsohn.

Mr. F. Burrows (United Kingdom) served as Chairman of the Committee.

COMMITTEE ON ARTICLE 10

Chile, represented by Mr. J. Ansted,
 Federal Republic of Germany, represented by Dr. H. Grützner,
 France, represented by Mr. A. Garnault,

France, représentée par M. P. Franck,
 Nigéria, représentée par M. S.O. Okunribido,
 Espagne, représentée par M. C. Gómez Jara,
 Suède, représentée par M. K. Sidenbladh,
 Union des Républiques socialistes soviétiques, représentée par M. G. Grjaznov,
 Royaume-Uni, représenté par MM. A.W.G. Kean et F. Burrows,
 Etats-Unis d'Amérique, représentés par M. R.P. Boyle,
 Venezuela, représenté par M. C. Rodríguez-Jiménez.
 M. K. Sidenbladh (Suède) a présidé le comité.

COMITE DES DISPOSITIONS PROTOCOLAIRES

Argentine, représentée par M. Ricardo P. Quadri,
 Belgique, représentée par M. J. Verstappen,
 République fédérale d'Allemagne, représentée par M. G. Van Well,
 France, représentée par M. G. Julienne,
 Japon, représenté par M. N. Nakano,
 Pay-Bas, représentés par M. G. Hubée,
 Sénégal, représenté par M. E.J.L. Braure,
 Union des Républiques socialistes soviétiques, représentée par M. G. Vilkov,
 Royaume-Uni, représenté par M. F. Burrows,
 Etats-Unis d'Amérique, représentés par M. A.I. Mendelsohn.

M. F. Burrows (Royaume-Uni) a présidé le comité.

COMITE DE L'ARTICLE 10

Chili, représenté par M. J. Ansted,
 République fédérale d'Allemagne, représentée par M. H. Grützner,
 France, représentée par M. A. Garnault,

Francia, representada por el Sr. P. Franck,
 Nigeria, representada por el Er. S.O. Okunribido,
 España, representada por el Sr. C. Gómez Jara,
 Suecia, representada por el Sr. K. Sidenbladh,
 Unión de Repúblicas Socialistas Soviéticas, representada por el Sr. G. Grjaznov,
 Reino Unido, representado por los Sres. A.W.G. Kean y F. Burrows,
 Estados Unidos de América, representados por el Sr. R.P. Boyle,
 Venezuela, representado por el Sr. C. Rodríguez-Jiménez.
 El Sr. K. Sidenbladh (Suecia) actuó como Presidente del Comité.

COMITE DE DISPOSICIONES FINALES

Argentina, representada por el Sr. Ricardo P. Quadri,
 Bélgica, representada por el Sr. J. Verstappen,
 República Federal de Alemania, representada por el Sr. G. Van Well,
 Francia, representada por el Sr. G. Julienne,
 Japón, representado por el Sr. N. Nakano,
 Países Bajos, representados por el Sr. G. Hubée,
 Senegal, representado por el Sr. E.J.L. Braure,
 Unión de Repúblicas Socialistas Soviéticas, representada por el Sr. G. Vilkov,
 Reino Unido, representado por el Sr. F. Burrows,
 Estados Unidos de América, representados por el Sr. A.I. Mendelsohn.

El Sr. F. Burrows (Reino Unido) actuó como Presidente del Comité.

COMITE DEL ARTICULO 10

Chile, representado por el Sr. J. Ansted,
 República Federal de Alemania, representada por el Dr. H. Grützner,
 Francia, representada por el Sr. A. Garnault,

Japan, represented by Mr. H. Yamaguchi,
 Netherlands, represented by Mr. L. Hulsman,
 Norway, represented by Mr. C. Stabel,
 Philippines, represented by Mr. E.J. De La Rosa,
 Switzerland, represented by Mr. C. Markees,
 United Kingdom, represented by Sir Richard Wilberforce,
 United States of America, represented by Mr. J.H. Wanner,
 Yugoslavia, represented by Mr. B. Zlatarić.
 Sir Richard Wilberforce (United Kingdom) served as Chairman of the Committee.

Japon, représenté par M. H. Yamaguchi,
 Pays-Bas, représentés par M. L. Hulsman,
 Norvège, représentée par M. C. Stabel,
 Philippines, représentées par M. E.J. De La Rosa,
 Suisse, représentée par M. C. Markees,
 Royaume-Uni, représenté par Sir Richard Wilberforce,
 Etats-Unis d'Amérique, représentés par M. J.H. Wanner,
 Yougoslavie, représentée par M. B. Zlatarić.
 Sir Richard Wilberforce (Royaume-Uni) a présidé le comité.

Japón, representado por el Sr. H. Yamaguchi,
 Países Bajos, representados por el Sr. L. Hulsman,
 Noruega, representada por el Sr. C. Stabel,
 Filipinas, representada por el Sr. E.J. De La Rosa,
 Suiza, representada por el Sr. C. Markees,
 Reino Unido, representado por Sir Richard Wilberforce,
 Estados Unidos de América, representados por el Sr. J.H. Wanner,
 Yugoslavia, representada por el Sr. B. Zlatarić.
 Sir Richard Wilberforce (Reino Unido) acutó como Presidente del Comité.

WORKING GROUP ON PART OF ARTICLE 1, PARAGRAPH 1

Belgium, represented by Messrs. R. Golstein and J. Verstappen,
 Spain, represented by Mr. C. Gómez Jara,
 Sweden, represented by Mr. K. Sidenbladh,
 Switzerland, represented by Dr. W. Guldemann,
 United States of America, represented by Mr. J.H. Wanner.
 Dr. W. Guldemann (Switzerland) served as Chairman of the Working Group.

GRUPE D'ETUDE D'UNE PARTIE DU PARAGRAPHE 1 DE L'ARTICLE 1^{er}

Belgique, représentée par MM. R. Golstein et J. Verstappen,
 Espagne, représentée par M. C. Gómez Jara,
 Suède, représentée par M. K. Sidenbladh,
 Suisse, représentée par M. W. Guldemann,
 Etats-Unis d'Amérique, représentés par M. J.H. Wanner.
 M. W. Guldemann (Suisse) a présidé le groupe.

GRUPO DE ESTUDIO ENCARGADO DE EXAMINAR UNA PARTE DEL ARTICULO 1, PARRAFO 1

Bélgica, Representada por los Sres. R. Golstein y J. Verstappen,
 España, representada por el Sr. C. Gómez Jara,
 Suecia, representada por el Sr. K. Sidenbladh,
 Suiza, representada por el Dr. W. Guldemann,
 Estados Unidos de América, representados por el Sr. J.H. Wanner.
 El Dr. W. Guldemann (Suiza) actuó como Presidente del Grupo de Estudio.

I

Following its deliberations, the Conference formulated the text of a Convention on Offences and Certain Other Acts Committed on Board Aircraft. The said Convention has been opened for signature at Tokyo this day and, hereafter, will remain open for signature at the Headquarters of the International Civil Aviation Organization in Montreal, Canada, until it comes into force.

II

The Conference furthermore adopted the following resolutions:

I

A la suite de ses délibérations, la conférence a rédigé le texte d'une Convention relative aux infractions et a certains autres actes survenant à bord des aéronefs. Ladite convention a été ouverte à la signature ce jour à Tokyo et ensuite restera ouverte à la signature au siège de l'Organisation de l'aviation civile internationale, à Montréal (Canada), jusqu'à son entrée en vigueur.

II

En outre, la conférence a adopté les résolutions suivantes:

I

Como resultado de sus deliberaciones, la Conferencia redactó el texto del Convenio sobre las infracciones y ciertos otros actos cometidos a bordo de las aeronaves. Este Convenio ha quedado abierto a la firma en el día de hoy, en Tokio, y continuará abierto a la firma en la Sede de la Organización de Aviación Civil Internacional, en Montreal, Canadá, hasta su entrada en vigor.

II

La Conferencia aprobó, además, las siguientes resoluciones:

- 287 -

A

The International Conference on Air Law held in the City of Tokyo, having adopted a Convention on Offences and Certain Other Acts Committed on Board Aircraft expresses its deep appreciation to the Government and the People of Japan for making possible the holding of the Conference in Tokyo and for their generous hospitality and great contribution to the successful completion of the work of the Conference.

B

The International Conference on Air Law held in the City of Tokyo,

CONSIDERING that it has been convened and held under the auspices of the International Civil Aviation Organization, and

CONSIDERING that it has taken as a basis for its work the proposed text of a Convention on Offences and Certain Other Acts Committed on Board Aircraft developed by the Legal Committee of the International Civil Aviation Organization,

WISHES TO EXPRESS its deep appreciation to the International Civil Aviation Organization, its Secretariat and the Legal Committee of the Organization for the major contribution of these efforts to the development of this Convention.

IN WITNESS WHEREOF the Delegates have signed this Final Act.

DONE at Tokyo on the fourteenth day of September of the year One Thousand Nine Hundred and Sixty-three in three authentic texts in the English, French and Spanish languages in a single copy which shall be deposited with the International Civil Aviation Organization and a certified copy of which shall be delivered by the said Organization to each of the Governments represented at the Conference.

A

La Conférence internationale de droit aérien, tenue en la Ville de Tokyo, ayant adopté une convention relative aux infractions et à certains autres actes survenant à bord des aéronefs, exprime sa profonde gratitude au gouvernement et à la population du Japon pour avoir rendu possible la tenue de la conférence à Tokyo, pour l'avoir généreusement accueillie et pour avoir tant contribué au succès de ses travaux.

B

La Conférence internationale de droit aérien tenue en la Ville de Tokyo.

CONSIDERANT qu'elle a été convoquée et s'est réunie sous les auspices de l'Organisation de l'Aviation civile internationale,

CONSIDERANT qu'elle a pris pour base de ses travaux le projet de texte de Convention concernant les infractions et certains autres actes survenant à bord des aéronefs élaboré par le Comité juridique de ladite organisation,

TIENT A EXPRIMER sa profonde gratitude à l'Organisation de l'Aviation civile internationale, à son secrétariat et au Comité juridique de l'Organisation pour la contribution importante qu'ils ont ainsi apportée à la réalisation de la présente Convention.

EN FOI DE QUOI les délégués signent le présent Acte final.

FAIT à Tokyo, le quatorzième jour du mois de septembre de l'an mil neuf cent soixante-trois, en trois textes authentiques rédigés dans les langues française, anglaise et espagnole, en un seul exemplaire qui sera déposé auprès de l'Organisation de l'aviation civile internationale, laquelle en transmettra copie certifiée conforme à chacun des gouvernements représentés à la conférence.

A

La conferencia internacional de derecho aéreo, celebrada en la ciudad de Tokio, después de aprobar el Convenio sobre las infracciones y ciertos otros actos cometidos a bordo de las aeronaves, expresa su profundo agradecimiento al Gobierno y al pueblo del Japón por haber hecho posible que se celebre en Tokio la Conferencia, y por su generosa hospitalidad y enorme aportación a la feliz realización de sus tareas.

B

La Conferencia Internacional de Derecho Aéreo, celebrada en la ciudad de Tokio,

CONSIDERANDO que se ha celebrado bajo los auspicios de la Organización de Aviación Civil Internacional, y

CONSIDERANDO que ha tomado como base de su labor el proyecto de convenio sobre las infracciones y ciertos otros actos cometidos a bordo de las aeronaves, preparado por el Comité Jurídico de la Organización de Aviación Civil Internacional,

DESEA EXPRESAR su profundo reconocimiento a la Organización de Aviación Civil Internacional, a su Secretaría y al Comité Jurídico de la Organización por la gran contribución en las tareas de redacción del presente Convenio.

EN TESTIMONIO DE LO CUAL los delegados firman la presente Acta Final.

HECHO en Tokio el día catorce de septiembre del año de mil novecientos sesenta y tres, en tres textos auténticos en español, francés e inglés, en un solo ejemplar que se depositará en la Organización de Aviación Civil Internacional, la cual remitirá una copia certificada a cada uno de los Gobiernos representados en esta Conferencia.

AFGHANISTAN

~~Handwritten signature~~
M. Ismail Navatan

ARGENTINA

~~Handwritten signature~~
~~Handwritten signature~~
~~Handwritten signature~~

AUSTRALIA

~~Handwritten signature~~
Robert Cameron

AUSTRIA

~~Handwritten signature~~
Fischer ~~Handwritten signature~~

BELGIUM

~~Handwritten signature~~

BOLIVIA

~~Handwritten signature~~

BRAZIL

J. M. Almeida

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

I. Kacub.

CAMBODIA

CANADA

U. S. Smith

CEYLON

*S. S. Wijesinghe
Sec. Sec. Foreign Affs.*

CHILE

J. J. F. J.

COLOMBIA

*W. S. J. J. J.
F. Gaitán de Narváez*

CONGO (BRAZZAVILLE)

*F. G. J. J.
F. G. J. J.*

COSTA RICA

J. J. J. J.

CUBA

ECUADOR

FEDERAL REPUBLIC OF GERMANY

*Minister der Finanzen
Günter Scheu* *Minister
für die Bundesrepublik
Deutschland* *Minister
für die Bundesrepublik
Deutschland*

FINLAND

A. Fiquant
Lemström

FRANCE

GREECE

Constantine Chr. Hadjicimoulas
Dimitrios

GUATEMALA

HOLY SEE

Suenesca Okamoto

HUNGARIAN PEOPLE'S REPUBLIC

Anna Andras

INDIA

P. Shan

INDONESIA

Sisonoem

IRAQ

K. Daghulani

ITALY

A. Ambrosini

Salvatore Lacopardo

IVORY COAST

Fouche

JAPAN

Shiro Sato

Kozo Suda

KUWAIT

LAOS

LIBERIA

Albert Conrad

MEXICO

Juan Rojas

NETHERLANDS

W. L. J. ...

Gerard Kulev¹⁷

NICARAGUA

H. S. Toledo /

NIGERIA

S. Adediji -

NORWAY

PAKISTAN

PANAMA

Antonio E. Noriega

PERU

PHILIPPINES

Antonio P. Quinsac *Jose Abad Santos*
Edwin P. Reyes
Edwin P. Reyes

POLISH PEOPLE'S REPUBLIC

J. Tadeusz Zieliński *Włodzisław*
Włodzisław

PORTUGAL

Fernando Pinto dos Santos

REPUBLIC OF CHINA

Hyoran
S. T. Chow

REPUBLIC OF HAITI

Sirvan N. S. P.

REPUBLIC OF KOREA

Kim Il-sung
Kim Il-sung *Kwang H. Cho* *Choi Gyoung*

REPUBLIC OF MALI

Hamptel

REPUBLIC OF THE UPPER VOLTA

[Signature]

RUMANIAN PEOPLE'S REPUBLIC

SENEGAL

SPAIN

Fernando R. Zueras

SWEDEN

Karl Sidén

SWITZERLAND

H. Müller

UKRAINIAN SOVIET SOCIALIST REPUBLIC

H. Kovalyuk

UNION OF SOVIET SOCIALIST REPUBLICS

N. S. Khrushchev
K. U. Rumyantsev
A. A. Gromyko

UNITED ARAB REPUBLIC

G. A. Ghabr

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Richard Wilberforce
Arnold Kean
Fred Burrows

UNITED STATES OF AMERICA

Robert P. Boyle

VENEZUELA

Carlos Rodríguez Cárdenas

YUGOSLAVIA

Dr. Branislav Jovanović

A L P H A B E T I C A L I N D E X

NOTE:- The Roman numerals, e.g. (ii), refer to the pages of the Introduction; the Arabic numerals, e.g. (2), refer to the Minutes (Volume I); the underlined Arabic numerals, e.g. (2), refer to the Documents (Volume II).

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