

Three International Conventions on Hijacking and Offences on board Aircraft

Explanatory Documentation
prepared for
Commonwealth Jurisdictions



Commonwealth Secretariat

THREE INTERNATIONAL CONVENTIONS ON
HIJACKING AND OFFENCES ON BOARD AIRCRAFT:

- (i) Convention on Offences and certain other
Acts committed on board Aircraft,
Tokyo, 14 September 1963
- (ii) Convention for Suppression of
Unlawful Seizure of Aircraft,
The Hague, 16 September 1970
- (iii) Convention for the Suppression of Unlawful
Acts against the Safety of Civil Aviation,
Montreal, 23 September 1971

Explanatory Documentation prepared for
Commonwealth Jurisdictions by David Lloyd Jones
in association with the Commonwealth Secretariat

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P R E F A C E

The concept of the 'accession kit' - a "do-it-yourself" manual for Governments interested in acceding to selected international conventions and one designed to facilitate the process by providing their legal advisers with a commentary on the conventions and model Bills for any legislative step required as a consequence - is one developed by Professors David McClean (of the University of Sheffield) and Keith Patchett (of the University of Wales Institute of Science & Technology) in conjunction with the Commonwealth Secretariat.

A series of such kits has been, and will continue to be, produced but hitherto these have been confined to the field of Private International Law.

This 'kit', prepared by David Lloyd Jones (Fellow of Downing College, Cambridge and adviser to the Government of the Solomon Islands on treaty succession), is the first of several planned for the area of Public International Law.

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Hijacking and Offences on board Aircraft

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INTRODUCTION

"Fifty years ago the idea that aircraft might become a field for the application of the Criminal Law would have seemed fanciful. Even thirty years ago our legislators would have thought it premature to contemplate legislation on the subject. A dozen or so people, probably all men, flying together for an hour or two in conditions of discomfort would hardly have had either the opportunity or the vitality to be otherwise than law-abiding. But now we have one to 200 people flying together, commonly for four to seven hours, at times for 12 to 15 hours. They fly in conditions of security and comfort. They have room to move about. They include both sexes. They are plentifully supplied with alcoholic stimulants,... and the purely statistical chances of abnormal behaviour are obviously greatly increased. Moreover, aircraft pass rapidly over frontiers which on land may be carefully controlled. They offer great opportunities for the transfer from one country to another, possibly a thousand miles or more away, of commodities for which a high price will be paid and which cannot pass to their most profitable market by land or sea: things such as gold, drugs, diamonds, secret plans and designs. It is very tempting for passengers on these aircraft and for their crews to undertake or lend themselves as accessories to these trades. So crimes may be committed on aircraft and aircraft may be used for unlawful activities." (Wilberforce: Crime in Aircraft (1963) 67 Journal Royal Aeronautical Society 175).

In the period of almost twenty years which has elapsed since these words were written the notion of crime on board aircraft has become all too familiar. Today, the opportunities to utilise air travel for the furtherance of international criminal activities are as great as ever and the vast increase in the volume of international air traffic has greatly increased the likelihood and the incidence of criminal conduct on board aircraft. Furthermore, during this period the problem has assumed an entirely

new dimension with the emergence of international terrorism on a large scale. Aircraft are no longer merely the theatre for criminal activities; they have become their object and their unlawful seizure has become almost commonplace. The very nature of international travel by air - the carriage of large numbers of persons in a confined space through the territorial airspace of many States and outside the territory of any State on board aircraft purchased by their operators at enormous expense - renders aircraft, their passengers and crews particularly susceptible to international terrorist and criminal activities. Furthermore the mobility of aircraft often enables hijackers to escape to a State whose government is sympathetic to their cause, thereby evading arrest and punishment.

During the last two decades terrorist and criminal activities in relation to aircraft have increased to such an extent that the international community has been obliged to conclude multilateral treaties to combat them and to overcome the legal difficulties which inevitably arise when the interests of a large number of States are actually or potentially involved. Three multilateral treaties, each concluded under the auspices of the International Civil Aviation Organisation, are relevant here:

- (i) Convention on Offences and certain other Acts committed on board Aircraft, Tokyo, 14 September, 1963;
- (ii) Convention for the Suppression of Unlawful Seizure of Aircraft, The Hague, 16 December, 1970;
- (iii) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 23 September, 1971.

The principal object of this document is to examine the problems which call for resolution by international agreement and to explain the ways in which these treaties attempt to solve them. Before embarking on a detailed examination of each of these treaties, however, it is convenient to consider certain preliminary matters.

The basic problem encountered in seeking to regulate conduct on board aircraft is one of State jurisdiction. It is therefore convenient to consider at the outset the nature of criminal jurisdiction and the different senses in which the term is employed. Three different concepts arise for consideration here:

- (i) Legislative jurisdiction by which is meant the power of a State to prescribe legal rules;
- (ii) Executive or enforcement jurisdiction by which is meant the power of a State to enforce legal rules by execution action;
- (iii) Curial jurisdiction by which is meant the power of the courts of a State to enforce legal rules and punish their contravention.

Enforcement jurisdiction is necessarily limited to the territory of the acting State for no State may enforce its laws within the territory of another State. Legislative jurisdiction, which describes the ambit of the criminal law of a State and its power to characterise conduct as lawful or unlawful, is not so limited and there are many examples of States prescribing rules for the conduct of their nationals and aliens abroad. In practice legislative jurisdiction will often be closely bound up with questions of curial jurisdiction because in considering the entitlement

of a domestic court to exercise criminal jurisdiction in a particular case one is concerned to ascertain not only whether the conduct in question is a matter in respect of which the court may properly exercise jurisdiction but also whether the conduct constitutes an offence contrary to the law of that State.

The exercise of criminal jurisdiction by States is often explained in terms of certain jurisdictional linking factors between the relevant conduct and the State exercising jurisdiction. Common law systems generally claim to prescribe and enforce criminal law on grounds of territoriality i.e. that the relevant conduct took place within the territory of the State exercising jurisdiction. State registered vessels and aircraft are often assimilated to State territory for this purpose. Furthermore, this theoretical basis of jurisdiction has been extended by the subjective and objective theories of territoriality to include activities which take place partly in the territory of one State and partly in the territory of another. In such circumstances the State where the conduct is initiated exercises jurisdiction on the basis of subjective territoriality and the State where the conduct is completed exercises jurisdiction on the basis of objective territoriality if, in each case, the conduct would constitute a criminal offence by the law of that State if performed there in its entirety and if an element of the actus reus of the offence took place there. These extensions are frequently encountered in common law systems and are often bound up with notions of constructive presence. The principle of nationality, whereby States exercise jurisdiction over the conduct of their nationals wherever it takes place, is particularly favoured in civil law systems but it is also frequently invoked in common law jurisdictions. In addition, States sometimes exercise criminal jurisdiction on the grounds that

their nationals are the victims of the relevant conduct (passive personality principle) or that such conduct imperils the vital national interests of the State (protection or security principle) or, occasionally, on the grounds that the effects of conduct abroad are felt within the territory of that State (effects principle). Finally, certain conduct is regarded as so prejudicial to the interests of the international community that any State may exercise jurisdiction over it wherever it takes place and whatever the nationality of the actor (universality principle).

These jurisdictional linking factors are useful in that they describe the grounds on which States frequently claim to exercise jurisdiction. However, it should not be supposed that an exercise of extra-territorial jurisdiction is permissible in international law only if it can be accommodated within one of these established categories. International law does not prohibit States from extending the application of their laws and the jurisdiction of their courts save when this may be justified by reference to a permissive rule of international law. On the contrary, international law leaves a wide measure of discretion to States in such matters and this is subject only to certain prohibitive rules. We shall see that the treaties which seek to establish a uniform approach to offences committed on board aircraft require contracting States to establish their jurisdiction in circumstances where there are present none of the traditional jurisdictional linking factors. Nevertheless, the exercise of jurisdiction in the circumstances contemplated by these treaties is, it is suggested, entirely in conformity with existing rules of international law.

A further note of caution must be sounded at the outset. The jurisdiction of a State's courts and the ambit of its laws are inseparably bound together for unless

the criminal law of a State extends to conduct on board aircraft that conduct cannot be characterised as unlawful and consequently there is no offence over which its courts may exercise jurisdiction. A neat example is provided by R.v. Martin [1956] 2 Q.B. 272. The defendants were charged with being in possession of raw opium on board a British-registered aircraft flying between Bahrein and Singapore. Devlin J. held that the offence with which the defendants were charged, under the Dangerous Drug Regulations, 1953, was committed only if the acts constituting the offence were committed in England. He also considered that section 62, Civil Aviation Act, 1949, which provided that any offence whatever committed on a British aircraft should, for the purpose of conferring jurisdiction, be deemed to have been committed in any place where the offender may for the time being be, did not create offences or extend the ambit of existing criminal laws but merely provided the place where an act which was already an offence, if committed on board a British aircraft outside England, might be tried. Since the ambit of the Regulations under which the defendants were indicted did not extend to the circumstances in which the conduct took place, there was no offence over which the English courts might exercise jurisdiction. The vacuum in English law exposed by this decision has since been remedied by legislation. Nevertheless, the decision demonstrates the necessity of ensuring that a State's laws extend to conduct on board its registered aircraft and that there exist tribunals competent to exercise jurisdiction over infringements of those laws.

Traditionally States have claimed a universal jurisdiction over acts which have constituted piracy in the law of nations. It is necessary, therefore, to consider whether the concept of piracy *jure gentium* includes conduct on board aircraft or which is directed against aircraft. The customary international law on the subject is now

codified in Article 15 of the Geneva Convention on the High Seas, 1958, which reflects an extension of the traditional concept by analogy so as to include certain acts in relation to aircraft. Article 15 provides:

"Piracy consists of any of the following acts:

- (1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (2) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft.
- (3) Any act of inciting or of intentionally facilitating an act described in sub-paragraph (1) or sub-paragraph 2 of this article."

Article 19 of the Convention provides for universal jurisdiction over pirates. Nevertheless, the inadequacy of the modern law of piracy as a means of combating hijacking will be immediately apparent. In particular, the following matters limit its effectiveness.

- (i) The illegal acts must be committed "for private ends". While there have been many examples of hijackings which have been performed for private ends, usually the extortion of a sum of money, the majority have been committed for overtly political objectives and consequently do not constitute piracy *jure gentium*;

- (ii) The acts must take place on (or presumably over) the high seas or in a place outside the jurisdiction of any State. Consequently the unlawful seizure of an aircraft in the airspace of any State is not piracy jure gentium;

- (iii) Although Article 15 is not entirely clear on the point, it seems that if acts are to constitute piracy jure gentium they must be directed by the crew or passengers of one ship or aircraft against another ship or aircraft. This would exclude virtually all recorded instances of hijacking from the scope of the provision.

Each of the three treaties with which this document is concerned seeks, inter alia, to deal with these jurisdictional shortcomings. The Tokyo Convention requires contracting States to extend their jurisdiction over offences committed on board their registered aircraft. The Hague and Montreal Conventions come close to establishing a universal jurisdiction over acts of unlawful seizure and other acts against the safety of civil aviation. In addition these Conventions make detailed provision for extradition and require contracting States to extradite persons in certain circumstances, thereby considerably reducing the risk that offenders will escape arrest and punishment. Each of the three treaties will now be considered in turn.

CHAPTER ONE

CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT, TOKYO, 14 SEPTEMBER 1963

Between 1956 and 1959 the Legal Committee of the International Civil Aviation Organisation made preliminary studies into the question of offences on board aircraft. In 1959 the Committee drew up a draft Convention which was revised in the light of comments received from member States. The revised draft Convention was presented by the I.C.A.O. Council to a Diplomatic Conference in Tokyo and after further amendments had been made the Convention on Offences and Certain other Acts Committed on Board Aircraft was signed in Tokyo on 14 September 1963. The Convention entered into force on 4 December 1969.

One hundred and six States are currently parties to the Tokyo Convention. A further three States have signed the Convention but have not yet ratified it. The United Kingdom ratified the Convention on 29th November 1968 "in respect of the United Kingdom of Great Britain and Northern Ireland and Territories under the territorial sovereignty of the United Kingdom as well as the British Solomon Islands Protectorate." A number of these States have since attained independence. Of these, The Bahamas, Fiji and Papua New Guinea have formally succeeded to the Convention. A number of newly independent Commonwealth States are entitled to succeed to the Convention. Certain other newly independent Commonwealth States have acceded to the Convention. The text of the Convention appears as Appendix 1 and a complete list of signatures, ratifications, accessions and successions is set out in Appendix 2.

Object and scope of the Convention

The Convention seeks to establish a uniform approach to acts on board aircraft which are offences against penal law or which may or do jeopardise the safety of aircraft or of persons or property on board aircraft or which jeopardise good order and discipline on board aircraft. The Convention includes provisions relating to the exercise of jurisdiction (Chapter II) and detailed rules as to the powers of the aircraft commander (Chapter III). Chapter IV deals in very general terms with unlawful seizure of aircraft. The Convention makes detailed provision for the powers and duties of contracting States when an offence is committed on board an aircraft (Chapter V).

The Convention is intended to apply only to civil aircraft and provides that it shall not apply to aircraft used in military, customs or police services. (Article 1(4).) It seems that difficult questions of interpretation may arise. A military aircraft engaged in carrying civilians would appear to fall within the Convention but the converse case of a civil aircraft employed by civil operators in carrying troops or military personnel is probably outside its ambit. Whether the Convention applies to activities on board a particular aircraft will ultimately be a question of fact in each case.

The activities to be regulated under the Convention fall into two categories:

- (i) Offences against penal law;
- (ii) Acts which, whether or not they are offences, may or do jeopardise the safety of the aircraft or of persons or property therein or which jeopardise good order and discipline on board. (Article 1(1).)

The first category is based on the assumption that the penal laws of one or more States extend to activities on board the aircraft. The Convention is intended to apply to all criminal acts on board aircraft with the exception of offences against penal laws of a political nature or those based on racial or religious discrimination. (Article 2.) However this exception is expressed to be without prejudice to the limited right vested in a contracting State, which is not the State of registration of the aircraft, to interfere with an aircraft in flight in order to exercise criminal jurisdiction in accordance with Article 4. Furthermore, the exception does not apply where the safety of the aircraft or persons or property on board so requires. Since the Convention does not stipulate that any particular conduct is to be prohibited by contracting States, what constitutes an offence within Article 1 will vary according to the applicable law. The second category extends the ambit of the Convention so as to include activities prejudicial to the safety of the aircraft, persons or property therein, to good order and discipline on board the aircraft, which are not offences against penal law.

The Convention applies to offences committed or acts done by a person on board an aircraft registered in a contracting State while the aircraft is in flight. (Article 1(2).) An aircraft is in flight for this purpose from the moment when power is applied for the purpose of take-off until the moment when the landing run ends. (Article 1(3).) It is not entirely clear whether an aircraft is in flight for this purpose when taxiing from the point where its doors are closed to the point where it begins its take-off run and when after landing it taxis to the point where its doors are opened. However, the better view is that an aircraft is in flight for this purpose from the commencement of its take-off run to the time when it turns off the runway after landing. This view is also supported by the wider definition

of "flight" applied in Chapter III of the Convention which governs the powers of the aircraft commander. In addition, the Convention applies in two cases where an aircraft is not in flight. Firstly, it applies when an aircraft is on the surface of the high seas, for example after an emergency landing. Secondly, it applies if an aircraft is on the surface of any area outside the territory of any State, for example Antarctica.

Jurisdiction

Chapter II seeks to ensure that the State of registration of an aircraft has jurisdiction over offences committed on board the aircraft but it also acknowledges the possibility that other States may claim jurisdiction over such conduct and that there may exist overlapping or concurrent jurisdictions.

Article 3 provides:

- "(1) The State of registration of the aircraft is competent to exercise jurisdiction over offences and acts 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..."

It is not clear whether this provision avoids the difficulty encountered in R.v. Martin [1956] 2 Q.B. 272 where it emerged that although the jurisdiction of the United Kingdom could be said to embrace United Kingdom registered aircraft spatially, certain acts done on an aircraft did not constitute substantive offences in English law. It could be argued that measures "necessary to establish... jurisdiction... over offences committed on board..." need not involve the constitution of any particular act as an offence. On the other hand, the reference to both "offences"

and "acts" as being within the general competence of States "to exercise jurisdiction", when taken together with the more restricted requirement of measures necessary to establish jurisdiction, suggests that the acts over which jurisdiction is to be established must also be designated as offences. Indeed any other construction might be said to defeat the object of the Convention. In the United Kingdom, the Tokyo Convention Act 1967 (1967 c.52) remedies the defects in the ambit of the criminal law exposed in R v. Martin and provides that an act or omission taking place on board a British-controlled aircraft while in flight elsewhere than in or over the United Kingdom which, if taking place in, or in a part of, the United Kingdom would constitute an offence under the law in force in, or in that part of, the United Kingdom shall constitute that offence subject to an exception in the case of acts or omissions expressly or impliedly authorised by that law when taking place outside the United Kingdom. (Section 1(1).) It is accordingly recommended that States acceding to the Convention should extend the ambit of their criminal laws to conduct on board aircraft registered in those States, by the enactment of a provision similar to that contained in the United Kingdom legislation.

Although there is an obligation on a contracting State to take such measures as may be necessary to establish its jurisdiction over offences on board aircraft registered in that State, there seems to be no duty on that State to exercise the jurisdiction.

The Convention does not exclude any criminal jurisdiction exercised in accordance with national law (Article 3(3).) Furthermore, it provides in Article 4 that a contracting State which is not the State of registration may interfere with an aircraft in flight in order to exercise its criminal jurisdiction over an offence

committed on board only 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.

These five heads are intended to cover the situations where a State other than the State of registration has a particular interest in exercising jurisdiction sufficient to justify an interference with an aircraft in flight. However, the provision does not regulate the exercise of jurisdiction by States other than the State of registration, except in circumstances where there is an interference with an aircraft in flight.

It is possible, therefore, that a number of States may be in a position to exercise jurisdiction in respect of a single activity on board an aircraft and may all seek to do so. Although the jurisdiction of the State of registration is, in a sense, treated as the primary jurisdiction - for example, the provisions in relation to extradition favour the

exercise of jurisdiction by the State of registration - there is no scheme of priority of jurisdiction under the Convention and there exists a possibility of conflicts of jurisdiction and double jeopardy. However, this is a difficulty which has long been familiar in the case of offences committed in more than one State or outside the territory of any State and the failure of the Convention to make provision for a priority of jurisdictions is perhaps of limited importance. What is of far greater importance is that it ensures that whenever an offence is committed on board an aircraft which is registered in a State party to the Tokyo Convention there will be at least one State of competent jurisdiction, and the risk of such activities going unpunished is therefore greatly reduced.

Particular provision is made in the Convention for the situation where contracting States establish joint air transport operating organisations or international operating agencies. If such organisations or agencies operate aircraft not registered in any one State, those States are obliged to designate the State among them which for the purposes of the Convention is to be considered as the State of registration. (Article 18.) Notice of the designation of one State for this purpose must be given to the International Civil Aviation Organisation which will, in turn, communicate the notice to all States parties to the Convention. In this way, the Convention ensures that the jurisdiction of at least one State is established over an aircraft operated by such an organisation or agency.

However, the Convention does not cover all possible difficulties which may arise from the scheme it adopts. For example, no specific provision is made for the case where an aircraft is chartered to a company in a State other than that where the aircraft is registered. It seems that the only State under an obligation to establish its jurisdiction over

activities on board the aircraft when so operated is the State of registration. This is so even if the aircraft is operated by a crew provided by the charterer. This is undesirable because the State with which the aircraft is most closely connected when so operated is the State in which the charterer has his principal place of business.

Powers of aircraft commander

Chapter III of the Convention confers on the commander of an aircraft special powers which may be exercised:

- (i) in respect of offences or acts committed by a person on board an aircraft in flight in the airspace of a State other than the State of registration;
(by implication from Article 5(1).)
- (ii) in respect of offences or acts 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 the State, provided that:
 - (a) the last point of take-off or the next place of intended landing is situated in a State other than that of registration, or
 - (b) the aircraft subsequently flies in the airspace of a State other than that of registration. (Article 5(1).)
- (iii) in respect of offences or acts committed by a person on board an aircraft which has made a forced landing until competent authorities of a State take over the

responsibility for the aircraft and for the persons and property on board.
(Article 5(2).)

For the purposes of Chapter III an extended definition of "flight" is employed. An aircraft is considered to be in flight from the moment when all its external doors are closed following embarkation until the moment when any external door is opened for disembarkation. (Article 5(2).)

The special powers of the commander fall into three categories. First, when he has reasonable grounds to believe that a person has committed or is about to commit an offence on board the aircraft he may impose upon that 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 that person to competent authorities or to disembark him.
(Article 6(1).)

The commander may require or authorise the assistance of other crew members and may request (but not require) and authorise the assistance of passengers to restrain any person whom he is entitled to restrain. (Article 6(2).) Furthermore, any crew member or passenger may take reasonable preventive measures without the authorisation of the commanding officer 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 6(2).) The measures of restraint imposed may not be continued beyond any point at which the aircraft lands unless:

- (a) That point is in the territory of a non-contracting State and its authorities refuse to permit disembarkation of that person or the measures have been imposed in order to deliver him to the competent authorities;
- (b) The aircraft makes a forced landing and the aircraft commander is unable to deliver that person to competent authorities; or
- (c) The person restrained agrees to onward carriage under restraint. (Article 7(1).)

The commander is under an obligation, as soon as practicable and if possible before landing in the territory of a State with a person on board under restraint, to notify the authorities of such State of the fact that a person on board is under restraint and of the reasons for such restraint.

Secondly, the aircraft commander may disembark in the territory of any State in which the aircraft lands any person who he has reasonable cause to believe has committed or is about to commit an act which, whether or not it is an offence, may jeopardise or does jeopardise the safety of the aircraft or of persons or property therein or good order and discipline on board. However, he may only do so insofar as it is necessary for the purpose of protecting the safety of the aircraft or of persons or property therein, or to maintain good order and discipline on board. (Article 8(1).) The commander is obliged to report to the authorities of the State in which he disembarks a person the fact of and the reasons for the disembarkation. (Article 8(2).) It should be noted that this power of disembarkation is not limited to disembarkation in contracting States.

Thirdly, the 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 cause 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. (Article 9(1).) The power of delivery is narrower than the power of disembarkation in two ways. Firstly, it is limited to delivery to the competent authorities of a contracting State. Secondly, it is limited to "a serious offence". Unfortunately "serious offence" is not defined in the Convention and the matter seems to be left to the opinion of the commander. The commander is under a duty, as soon as practicable and if possible before landing in the territory of a contracting State, to notify the authorities of the State that he has a person on board whom he intends to deliver and to notify them of the reasons for the delivery. (Article 9(2).) The commander is obliged to furnish to the authorities to whom a suspected offender is delivered evidence and information of which he is lawfully in possession, under the law of the State of registration of the aircraft. (Article 9(3).)

The Convention further provides that the commander, the members of the crew, the passengers, the owner or operator of the aircraft, and the person on whose behalf the flight was performed shall not be held responsible for actions taken in accordance with the Convention, in any proceedings on account of the treatment undergone by the person against whom the actions were taken. (Article 10). However the powers conferred on the commander may be exercised only when he has reasonable grounds for believing that the exercise of his powers is necessary to achieve the purposes set out in the Convention. It seems that Article 10, which applies only to actions taken in accordance with the Convention, provides no protection where there were no reasonable grounds for believing that an offence or prejudicial act had been committed

or was about to be committed, in the case of restraint and disembarkation, or that a serious offence according to the penal law of the State of registration of the aircraft had been committed, in the case of delivery.

The powers and duties of States in relation to disembarkation and delivery are considered below.

Unlawful seizure of aircraft

Chapter IV of the Convention deals in a single article with the specific offence of unlawful seizure of an aircraft. It provides that when a person on board an aircraft has unlawfully committed by force or threat of force 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 are under a duty to take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft. (Article 11(1).) In such circumstances, the contracting State in which the aircraft lands is obliged to permit its passengers and crew to continue their journey as soon as practicable and to return the aircraft and its cargo to the persons lawfully entitled to possession. (Article 11(2).)

The provisions in Chapter IV, which were included at the instigation of the United States and Venezuelan delegations, deal in extremely general terms with the question of hijacking. However, these rudimentary provisions foreshadow the considerably more detailed treatment of unlawful seizure of aircraft contained in the Hague Convention.

The powers and duties of contracting States in relation to persons suspected of conduct contemplated by Chapter IV of the Convention are considered in the next section.

Powers and duties of States

The Convention imposes certain duties and confers certain powers on contracting States in relation to the exercise of jurisdiction and in particular in relation to persons who have been disembarked or delivered in the manner described above. Perhaps the most importance of these provisions is that which requires contracting States to pay due regard to the safety and other interests of air navigation in taking any measures for investigation or arrest or otherwise exercise jurisdiction in connection with any offence committed on board an aircraft. In such circumstances contracting States are also under an obligation to avoid unnecessary delay of the aircraft, passengers, crew or cargo (Article 17).

The circumstances in which the commander of an aircraft may disembark a person have been considered above. Contracting States are under a corresponding duty to allow the commander of an aircraft registered in another contracting State to disembark any person in accordance with the provisions of the Convention (Article 12). We have seen that the commander may exercise his power to disembark a person if it is necessary to protect the safety of the aircraft or of persons or property therein or to maintain good order and discipline on board and if he has reasonable grounds to believe that the person has committed or is about to commit on board the aircraft an act which may or does jeopardise the safety of the aircraft or persons or cargo on board, or good order and discipline. However, the Convention contains no provision which entitles the contracting State where the person is disembarked to ascertain whether the grounds for disembarkation are reasonable.

Contracting States are under a corresponding duty to take delivery of any person whom the aircraft commander delivers in accordance with the provisions of the Convention.

(Article 13(1).) The grounds on which the aircraft commander may deliver a person pursuant to the Convention have been considered above. A contracting State to which a person is delivered in accordance with the terms of the Convention or in whose territory an aircraft lands following an act of unlawful seizure or of attempted unlawful seizure, is under a duty to make a preliminary inquiry into the facts. (Article 13(4).) A contracting State to whom a person has been delivered is under a duty, if satisfied that the circumstances so warrant, to take custody or other measures to ensure the presence of any person of whom it has taken delivery. A contracting State is under a similar duty in relation to any person suspected of having unlawfully seized an aircraft or having attempted to do so. (Article 13(2).) The Convention provides that the custody and other measures must be as provided in the law of the receiving State. (Article 13(2).) The adoption by the Convention of national standards of treatment of aliens is considered in greater detail below. However, the Convention establishes a number of exceptions to the application of the national standard of treatment in such cases:

- (i) The custody and other measures to ensure the presence of the person may only be continued for such time as is reasonable necessary to enable any criminal or extradition proceedings to be instituted (Article 13(2));
- (ii) Any person in custody must be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national (Article 13(3));
- (iii) When a State has taken a person into custody it must immediately 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. (Article 13(5).)

Furthermore, the State which makes the preliminary inquiry is under a duty promptly to report its findings to the State of registration of the aircraft, the State of nationality of the individual and, if it considers it advisable, any other interested State and to indicate whether it intends to exercise jurisdiction. (Article 13(5).)

The Convention makes further provision for the powers and duties of States where a person has been disembarked or delivered, in accordance with the Convention, or where a person has disembarked after having committed an act of unlawful seizure or having attempted to do so. These may conveniently be treated together. Where such a person cannot continue his journey or does not desire to do so 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. (Article 14(1).) A contracting State is not to be regarded as having admitted a person to its territory for the purpose of its law relating to entry or admission of persons simply because it has permitted his disembarkation or delivery or has taken custody or other measures contemplated by the Convention. Similarly the return of a person does not have that effect. Furthermore, the Convention provides that it does not affect the law of a contracting State relating to expulsion of persons from its territory. (Article 14(2).) Such a person 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. (Article 15(1).) Finally, the State of landing is obliged to accord to such person treatment which is no less favourable for his protection and security than that accorded to nationals of that State in like circumstances. (Article 15(2).) This is a further example of the adoption by the Convention of a national standard in relation to treatment of aliens.

The question whether States must treat aliens in conformity with an international standard or whether it is sufficient that they conform with those standards which they apply in the treatment of their own nationals has long been a subject of controversy among governments and international lawyers. It is not possible in the context of this document to examine the question in detail, but it is necessary to consider the matter, albeit briefly, in an attempt to explain the effect of Article 13(2) and Article 15(2) of the Convention. Those who support the national standard argue that persons voluntarily present in the territory of another State cannot expect treatment more favourable than that accorded by that State to its own nationals and that neither they nor their governments may legitimately complain if they are treated in conformity with that standard. In particular, they contend that such persons must take the legal system of a State as they find it. In support of this theory they also point to the fact that varying economic conditions often make it impossible for certain States to attain standards which wealthier States may apply. There is some support in reported international arbitral awards for the application of a national standard to the treatment of aliens (e.g. Gelbtrunk Claim, U.S. v. Salvador; (1902) U.S. For Ref. 876, pp 877-878). However, the great majority of international arbitral awards support the existence of a rule of customary international law which requires States to treat aliens according to an international

minimum standard. (e.g. Neer Claim, U.S. v. Mexico; (1926) 4 R.I.A.A. 77; Faulkner Claim, U.S. v. Mexico; Opinions of Commissioners (1927) 100; Hopkins Claim, U.S. v. Mexico; Opinions of Commissioners (1927) 42; Chase Claim, U.S. v. Mexico, Opinions of Commissioners (1929) 17; Chevreau Case, France v. Great Britain (1931) 2 R.I.A.A. 1113). Furthermore the argument in favour of the application of the national standard based on the comparative lack of facilities of many developing States loses much of its force when one considers that the international minimum standard is extremely low. The essence of the rule is admirable summarised in the decision of the U.S. - Mexican General Claims Commission in the Neer Claim (supra);

"... (first) that the propriety of governmental acts should be put to the test of international standards, and (second) that the treatment of an alien, in order to constitute an international delinquency, should amount to an outrage, to bad faith, to wilful neglect of duty, or to an insufficiency of governmental action so far short of international standards that every reasonable and impartial man would readily recognise its insufficiency."

The adoption of a national standard in the Tokyo Convention subject to the exceptions listed above is unfortunate in that it misses an opportunity to establish consistency of State practice in this regard. The acceptance of a national standard in the present context is particularly regrettable because persons disembarked or delivered under the Convention in a contracting State can hardly be regarded as having voluntarily accepted the protection afforded by the legal system of that State. However, four further matters must be taken into account in interpreting these provisions of the Tokyo Convention. Firstly, if there is a rule of customary international law requiring the application of an international minimum standard in the treatment of aliens, and it is the view of the present writer that there is such a rule, a provision requiring States to apply only the

national standard would have the paradoxical result that a national of a contracting State disembarked or delivered in a State which is not a party to the Tokyo Convention would be entitled to the protection of the international minimum standard whereas he would not be so protected if disembarked or delivered in another contracting State. However, it is not entirely clear that the Tokyo Convention was intended to derogate from international law in this way and it may be that despite the provisions in the Convention, contracting States are nevertheless obliged to conform with the rules of customary international law which require that aliens should be treated in conformity with a minimum international standard. Secondly, the Convention clearly cannot affect the obligation of a contracting State to treat the nationals of a non-contracting State in accordance with the international minimum standard. Thirdly, under the Convention the national standard applies only to custody or other measures to ensure a person's presence (Article 13(2)) and matters of protection and security (Article 15(2).) Consequently the international minimum standard would appear to apply in relation to all other matters. Fourthly, the acceptance of the national standard is subject to the exceptions considered above.

The Convention makes no provision for the payment of costs incurred by the State of landing or the cost of the onward flight of a person who has been disembarked or delivered in accordance with the Convention.

Extradition

Acts committed on board an aircraft may constitute offences in a number of different jurisdictions. We have already considered the failure of the Tokyo Convention to make provision

for a priority of jurisdictions in such circumstances. The Convention requires that a contracting State to which a person is delivered or in whose territory an aircraft lands following the commission of an act of unlawful seizure of an aircraft or an attempted unlawful seizure shall immediately make a preliminary inquiry into the facts (Article 13(4)) and promptly report its findings to the State of registration of the aircraft and the State of nationality of the detained person and, if it considers it advisable, to any other interested States. (Article 13(5).) It is also required to indicate whether it intends to exercise jurisdiction. (Article 13(5).) Because of the possible existence of concurrent jurisdiction and the lack of any scheme of priority, the State of landing may also receive one or more requests for the extradition or return of the person. The Convention expressly provides that nothing therein shall be deemed to create an obligation to grant extradition (Article 16(2)) and consequently the rights and duties of States will be governed by such agreements or arrangements as may exist among them for the extradition or return of such persons. However, the Convention does provide that such a person is not to be at liberty to depart from the State of landing if his presence is required for the purpose of extradition proceedings (Article 15(1)) and that he may be detained in custody for such time as is reasonable to enable any extradition proceedings to be instituted. (Article 13(2).)

The Convention provides that 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 where they have occurred but also in the territory of the State of registration of the aircraft. (Article 16(1).) This provision can have no effect in the absence of an extradition treaty or arrangement for the return of fugitive offenders between the requesting State and the State holding the person. However, where such a treaty

or arrangement exists the provision may have the effect of extending its possible operation. For example, where an extradition treaty makes provision for the extradition of persons charged with offences committed within the territory of the requesting State, the provision would be extended to offences committed on board aircraft registered in the requesting State if both States were also parties to the Tokyo Convention. While this extension is obviously extremely important, it should be noted that its effect will vary according to the terms of the extradition treaty or arrangement in force between the relevant States.

Final Clauses

The International Civil Aviation Organisation is the depositary of the Tokyo Convention. It is required to inform all member States of the United Nations and the Specialised Agencies of signatures, ratifications, accessions, reservations and denunciations. (Article 26.)

The procedures to be employed in acceding to the Tokyo Convention are considered below.

A contracting State may denounce the Convention by notification addressed to the International Civil Aviation Organisation. Denunciation takes effect six months after the date of receipt by the International Civil Aviation Organisation of the notification of denunciation. (Article 23.)

The Convention provides that any dispute between two or more contracting States concerning the interpretation or application of the 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

organisation 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. (Article 24(1).) However, a contracting State may at the time of signature, ratification or accession enter a reservation declaring that it does not consider itself bound by Article 24(1). Such a reservation operates on a reciprocal basis. (Article 24(2).) A contracting State may withdraw a reservation by notification to the International Civil Aviation Organisation. (Article 24(3).)

No reservation may be made to the Tokyo Convention, with the single exception that reservations may be made to Article 24(1) as described above. (Article 25.)

Procedures on accession

The Tokyo Convention is open to accession at any time by any State Member of the United Nations or of any of the Specialised Agencies. (Article 22(1).) The instrument of accession must be deposited with the depositary, the International Civil Aviation Organisation. The Convention enters into force for an acceding State on the ninetieth day after the date of deposit of its instrument of accession. (Article 22(2).) The depositary, I.C.A.O., is required to inform all signatory and acceding States of the date of deposit of each instrument of accession. (Article 26).

If a reservation is to be entered to Article 24, the reservation should be communicated in writing to the depositary not later than the time of accession. The most convenient course is that the instrument of accession should include the terms of the reservation. No other reservation may be entered.

A number of newly independent Commonwealth States

are entitled to succeed to the Tokyo Convention which was ratified by the United Kingdom "in respect of the United Kingdom of Great Britain and Northern Ireland and Territories under the territorial sovereignty of the United Kingdom as well as the British Solomon Islands Protectorate". The Bahamas, Fiji and Papua New Guinea have formally succeeded to the Convention. It is not possible in the context of this document to consider in detail the question of State succession in respect of treaties. However, it should be noted that the position of each newly-independent State in this regard, and in particular the question of provisional succession, will vary according to the practice adopted by that State on independence.

Legislation will be necessary to give effect to the Convention in municipal law. In the United Kingdom this was provided by the Tokyo Convention Act 1967 (1967 c.52). A draft Bill is produced in Appendix 3.

By virtue of the Tokyo Convention Act 1967 (Overseas Territories) Order 1968 (S.I. 1968 No. 1864) sections 1,3,4, 5,6 and 7 and the Schedule to the Tokyo Convention Act as modified by that Statutory Instrument were extended to a number of Territories including the following which have since attained independence:

The Bahamas	Fiji
British Honduras	Gilbert and Ellice Islands
British Solomon Islands Protectorate	Colony Seychelles

CHAPTER TWO

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT THE HAGUE, 16 DECEMBER 1970

Although the Tokyo Convention includes certain provisions relating to the unlawful seizure of aircraft, these are both general in their terms and limited in their effect. The principal objective of the Tokyo Convention is to ensure that offences and acts which jeopardise the safety of aircraft or persons or property on board or which jeopardise good order and discipline on board aircraft should not go unpunished because of a lack of jurisdiction over the person or persons responsible. To this end it sets out detailed rules as to jurisdiction. The Tokyo Convention does not create or define particular offences; questions as to what constitutes an offence are left to be answered by the applicable system of criminal law. Proposals made by the United States and Venezuelan delegations at the Fourteenth Session of the I.C.A.O. Legal Committee held in Rome in 1962 led to the inclusion in that Convention of Article 11 and certain ancillary provisions which are the only provisions which relate to a specific offence. They do not require contracting States to prohibit or punish conduct which constitutes an unlawful seizure of an aircraft within the meaning of the Convention. They merely require contracting States to take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft, to permit its passengers and crew to continue their journey as soon as practicable and to return the aircraft and its cargo to the persons lawfully entitled to possession.

These provisions of the Tokyo Convention were insufficient to effectively combat the hijacking of aircraft.

During 1968 and 1969 there was a rapid increase in the number of hijackings. Between 1930 and 1967, 67 hijackings occurred; in 1968 there were 35 hijackings and in 1969 there were 87. A further international Convention was urgently required in order to co-ordinate State action in deterring and punishing such conduct. In September 1968 the Assembly of I.C.A.O. requested the Council of I.C.A.O. to institute a study on the prevention of hijacking. The question was referred to the Legal Committee and a sub-committee comprising of representatives of thirteen States held two sessions in Montreal in 1969 during which it prepared a draft Convention. The Legal Committee then produced a second draft which was sent to the I.C.A.O. Council. A conference was convened at The Hague in December 1970. On 16th December 1970 the conference adopted the Convention for the Suppression of Unlawful Seizure of Aircraft. The Convention entered into force on 14th October 1971, thirty days after the deposit of the tenth instrument of ratification. The text appears as Appendix 4.

One hundred States are currently parties to the Hague Convention. A further twelve States have signed the Convention but have not yet ratified it. The United Kingdom ratified the Convention on 22 December 1971 "in respect of the United Kingdom of Great Britain and Northern Ireland and Territories under the territorial sovereignty of the United Kingdom as well as the British Solomon Islands Protectorate." A number of these territories have since attained independence. Of these, The Bahamas and Papua New Guinea have both formally succeeded to the Convention. A number of other newly independent Commonwealth States are entitled to succeed to the Convention. Certain other newly independent Commonwealth States have acceded to the Convention. A complete list of signatures, ratifications, accessions and successions is set out in Appendix 5.

Object and Application of the Convention

In the preamble to the Convention the contracting States express their grave concern at the occurrence of acts of unlawful seizure of aircraft, which jeopardize the safety of persons and property, seriously affect the operation of air services and undermine confidence in the safety of civil aviation. The preamble also refers to the urgent need to provide appropriate measures for the punishment of offenders, for the purpose of deterring such acts.

The approach adopted by the Hague Convention is entirely different from that employed in the Tokyo Convention. The Hague Convention begins by establishing an offence of hijacking (Article 1). It then imposes an obligation on contracting States to make the offence punishable by severe penalties (Article 2). Each contracting State is required to take such measures as may be necessary to establish its jurisdiction over the offence and any other act of violence against the passengers or crew of an aircraft, in certain defined circumstances (Article 4). Each contracting State, if satisfied that the circumstances so warrant, is under a duty to take an alleged offender into custody or to take other measures to secure his presence (Article 6). A contracting State in the territory of which an alleged offender is found is under a duty to submit the case to its competent authorities for the purpose of prosecution, if it does not extradite him (Article 7). The Convention also deals with questions of extradition (Article 8).

The Convention is intended to apply only to civil aircraft and provides that it shall not apply to aircraft used in military, customs or police services (Article 3(2)). This provision is identical with that contained in Article 1(4) of the Tokyo Convention, and may give rise to the same

difficult questions of interpretation which have been considered in Section II.

Generally, the Convention applies only if the place of take-off or the place of actual landing of the aircraft on board which the offence is committed is situated outside the territory of the State of registration of that aircraft.(Article 3(3).) It is important to note that the scheduled destination is irrelevant for this purpose. If a case falls within the general rule in Article 3(3) it is immaterial whether the aircraft is engaged in an international or a domestic flight. Consequently the Convention will apply to acts on board an aircraft registered in State A during a flight of which the point of take-off or the point of landing is outside the territory of State A. The Convention will also apply to acts on board an aircraft registered in State A during a flight between two points in the territory of State B. To this general rule there exist a number of exceptions which will be considered subsequently.

The Offence of Hijacking

Article 1 of the Hague Convention provides:

"Any person who on board an aircraft in flight:

- (a) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act, or
- (b) is an accomplice of a person who performs or attempts to perform any such act commits an offence (hereinafter referred to as "the offence")."

Under Article 2 each contracting State undertakes to make the offence punishable by severe penalties.

The component elements of the principal offence are four in number:

- (i) The seizure or the exercise of control of an aircraft or an attempt to perform any such act;
- (ii) The seizure or the exercise of control or the attempt must be by force or threat of force or by any other form of intimidation;
- (iii) The seizure or exercise of control or the attempt must be unlawful;
- (iv) The seizure or exercise of control or the attempt must take place on board an aircraft in flight.

The offence created by Article 1 of the Hague Convention is very similar to the notion of wrongful interference with aircraft employed in Article 11 of the Tokyo Convention, although no offence is created by the Tokyo Convention. A further important difference between the two provisions is that the Hague Convention makes express provision for the liability of accomplices.

- (i) The seizure or the exercise of control of an aircraft

The first component element of the offence is that there should be a seizure of an aircraft or the exercise of control over an aircraft, or an attempt to perform either of these acts. The offence may be narrower than the notion of unlawful seizure of an aircraft in Article 11 of the Tokyo Convention which refers to "an act of interference, seizure or other

wrongful exercise of control of an aircraft in flight". It is theoretically possible to imagine conduct which might constitute an act of interference which would not constitute a seizure or an exercise of control over an aircraft. However if such an act of interference were performed with the intention of seizing or exercising control over the aircraft it seems likely that it would be sufficiently proximate and unequivocal to constitute an attempt within Article 1(a) of the Hague Convention. The three heads of seizure, exercise of control and attempt to commit either of the foregoing seems to be sufficiently wide to meet the mischief contemplated by the Convention. However these terms are not terms of art and no advantage is to be gained by attempting to distinguish between seizure or exercise of control. Taken together, the three categories clearly cover, inter alia, cases where a pilot is replaced, and cases where a pilot is ordered to follow the hijacker's instructions either through the use or threat of force against the pilot or the threat or use of force against other members of the crew, passengers or the aircraft.

However, it should be noted that under the Hague Convention the seizure or the exercise of control of an aircraft or an attempt to do so **must** be committed by a person or persons on board that aircraft. This requirement is considered in detail subsequently.

- (ii) The use or threat of force or any other form of intimidation

The unlawful seizure or exercise of control over an aircraft will constitute an offence within

Article 1 of the Hague Convention only if it is committed by the use or threat of force or by any other form of intimidation. Generally, hijackings are accomplished by the threat of force rather than the use of force, although there are a number of reported hijackings where force has been employed and passengers and members of the crew have been killed or wounded in the course of the seizure or taking of control. Both categories are included within the offence. The threat of force contemplates all cases where the use of force or violence is threatened against members of the crew, passengers or the aircraft itself. The offence may also extend to a threat to use force against persons or property not on board the aircraft, provided that the threat was made by a person or persons on board the aircraft for the purpose of seizing or taking control of the aircraft. It is doubtful whether the words "or by any other form of intimidation" extend the offence since such conduct is likely to involve the threat of force. However, it is perhaps just possible that a hijacker might attempt to gain control of an aircraft by making threats to the pilot, other than threats to use force. Such threats would probably constitute intimidation within the Hague Convention.

Certain other means of seizure or exercise of control appear to fall outside the offence created by Article 1. If the crew of an aircraft is bribed to fly it to a destination other than its scheduled destination the case falls outside Article 1. Similarly if the crew decide to fly the aircraft to a different destination for an unauthorised purpose, there may be an unlawful

exercise of control over the aircraft, but in the absence of the threat or use of force the case falls outside Article 1. Again, a case where control over an aircraft is established by deceit falls outside Article 1 provided that the threat or use of force was not subsequently employed to retain control of the aircraft. The travaux preparatoires of the Legal Committee of I.C.A.O. suggest that it was intended that cases of hijacking not involving the use or threat of force or other form of intimidation should be excluded from the scope of the Convention. (Report of the Legal Committee, 17th Session, I.C.A.O Document 8877-LC/161 pp. 28,30,33.)

(iii) Illegality of threat or use of force

A further component element of the offence created by Article 1 is that the conduct should be unlawful. A similar qualification is included in the notion of wrongful interference with aircraft in Article 11 of the Tokyo Convention. The inclusion of the word "unlawfully" in Article 1 of the Hague Convention serves to emphasise that the conduct must be without legal excuse or justification. Consequently, the acts of members of the crew or a police officer in attempting to regain control of an aircraft which has been seized by hijackers would not constitute an offence within Article 1. It is not clear by which legal system the legality of such conduct is to be judged. However, conduct which is justifiable in the law of the State of registration of the aircraft would certainly fall outside the scope of Article 1.

(iv) On board an aircraft in flight

An offence within Article 1 may be committed only by a person or persons on board an aircraft in flight. For the purposes of the Hague Convention, an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation. (Article 3) This provision conforms with the wider of the two definitions of "in flight" employed in the Tokyo Convention. In addition, an aircraft is deemed to be in flight under the Hague Convention in the case of a forced landing until the competent authorities take over the responsibility for the aircraft and for persons and property on board.

There are a number of reported incidents where an attempt was made to hijack an aircraft during the embarkation of passengers and before the external doors of the aircraft were closed. Such conduct, although taking place on board an aircraft, does not take place on board an aircraft in flight and consequently does not constitute an offence within Article 1. However, the consequences of this limitation on the scope of the offence are not as serious as might at first appear. If the attempt is unsuccessful and the hijacker apprehended, it is entirely appropriate that he should be prosecuted under the local law. On the other hand, if the attempt is successful and results in the closing of the external doors of the aircraft before take-off an offence within Article 1 is committed because the actor or actors continue to exercise control over an aircraft which is now considered to be

in flight. However, although the matter is not entirely free from doubt, it appears to follow from Article 3(3) that an offence within the Convention is committed in such circumstances only if the closing of the external doors is followed by the take-off of the aircraft. A third possibility is that the attempt might take place on board an aircraft during embarkation and before the external doors are closed and that although the attempt fails the actor or actors escape arrest in the State of embarkation, but are subsequently apprehended in another contracting State. In these circumstances such persons have not committed an offence within Article 1 of the Hague Convention. The same analysis would apply, it is suggested, in the three corresponding situations during disembarkation after an external door is opened.

Reference has been made to the fact that the principal offence contemplated by Article 1 may be committed only by a person or persons on board the aircraft which is the object of the actual or attempted seizure or exercise of control. The effect of this provision is to severely limit the scope of the offence. The threat or use of force must come from within the aircraft. Consequently the offence does not extend to a case where an aircraft is forced to change course by the threat or application of force from another aircraft. Similarly, a person who leaves explosives on board an aircraft before the flight commences and then, through radio contact from the ground to the aircraft in flight, threatens to detonate the explosives unless his instructions are followed would not commit an offence within Article 1. In

such a case, many legal systems would apply a notion of constructive presence and thereby deem the actor to have been on board the aircraft in flight, but there is no indication that the offence as defined in the Convention was intended to extend to such a case. However, such conduct would now fall within the scope of the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971. This Convention is considered in detail subsequently.

The offence established by Article 1 of the Hague Convention differs from aerial piracy, as defined in the Geneva Convention on the High Seas in two vital respects. Firstly, aerial piracy within the Geneva Convention requires that the acts constituting piracy must be directed against another aircraft. There is no such requirement under the Hague Convention. Indeed, an attack from one aircraft against another would not constitute an offence within the Hague Convention. Secondly, whereas an act must be performed for private ends if it is to constitute aerial piracy within the Geneva Convention, motive is irrelevant under the Hague Convention. Consequently, the offence under the Hague Convention more closely reflects the nature of the current threat to civil aviation.

Accomplices

Article 1 makes express provision for the liability of accomplices. Any person who on board an aircraft in flight is an accomplice of a person who performs or attempts to perform acts which would constitute the principal offence himself commits the offence. (Article 1(b).) The conduct

of an accomplice must take place on board an aircraft in flight if it is to constitute an offence within Article 1. This conclusion emerges from a literal interpretation of the provision in which the opening words are clearly intended to qualify both sub-clause (a) and sub-clause (b). This conclusion is also supported by the travaux préparatoires. The Sub-Committee of the Legal Committee of the I.C.A.O., which produced the first draft of the Convention intended that the offence should not extend to include the conduct of accomplices not on board the aircraft. An attempt at the Hague Conference to extend the scope of the Convention to the acts of accomplices on the ground was unsuccessful. Consequently this is another important limitation on the scope of the offence. The person who smuggles guns or explosives on board the aircraft and leaves the aircraft before the flight commences for example, does not commit an offence within Article 1. While such a limitation is regrettable, it should be remembered that such conduct would probably constitute an offence contrary to the local law and is not likely to give rise to the jurisdictional problems which might arise from conduct on board an aircraft in flight. Furthermore, this limitation does not detract from the effectiveness of the Convention in combating the principal mischief at which it is aimed, namely that offenders out of reach of national jurisdiction by virtue of the fact that they are on board aircraft in flight might escape prosecution.

Jurisdiction

Article 4 of the Hague Convention provides:

"1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offence and any other act of violence against passengers or crew committed by the alleged offender in connection

with the offence, in the following cases:

- (a) when the offence is committed on board an aircraft registered in that State;
- (b) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;
- (c) when the offence is committed on board an aircraft leased without crew to a lessee who has his principal place of business or, if the lessee has no such place of business, his permanent residence in that State.

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

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

This provision is of central importance to the scheme of the Convention. Article 4(1) and Article 4(2) oblige contracting States to establish their jurisdiction over the offence, as defined in Article 1, in certain specified circumstances. Those circumstances are extremely wide in their ambit.

It has been suggested, both in the Introduction and in relation to Article 3(2) of the Tokyo Convention, that the problem does not simply relate to questions of the jurisdictional competence of municipal courts but that, in addition, it involves questions of the ambit of a State's laws. Many of the problems which have arisen in this context are due not so much to the lack of a court of competent jurisdiction as to the inapplicability of rules of municipal law to conduct on board aircraft. In considering

the Tokyo Convention it was suggested that the effect of Article 3(2) of that Convention was probably to require a contracting State to extend certain rules of its municipal law to conduct on board aircraft registered in that State but that, in any event, such an extension was necessary if the extension of the jurisdiction of its courts was to have any effect, for without such an extension of its law there could be no offence over which to exercise jurisdiction. This argument applies with equal force to Article 4 of the Hague Convention. However, in the case of the Hague Convention it seems clear that such an extension of the criminal law of contracting States is required. For the Hague Convention begins by defining an offence and then goes on to require contracting States to establish their jurisdiction over it. Furthermore, by virtue of Article 2 each contracting State undertakes to make the offence punishable by severe penalties. It seems therefore that each contracting State is under a duty, in the first place, to render the conduct described in Article 1 of the Convention (i.e. "the offence") an offence contrary to its municipal law, if it is not already an offence contrary to that law. Secondly, each contracting State must ensure that that part of its municipal law extends to such conduct which takes place in the circumstances set out in Article 4(1)(a), (b) and (c) and Article 4(2) of the Convention. Thirdly, each contracting State must ensure that its municipal courts are competent to exercise jurisdiction over such conduct when occurring in such circumstances.

Article 4 requires contracting States to establish their jurisdiction in four sets of circumstances. It is convenient to consider each of these in turn.

(1) Conduct on board an aircraft registered in the contracting state

Article 4(1)(a) of the Convention requires each

contracting State to take such measures as may be necessary to establish its jurisdiction over the offence and any other act of violence against passengers or crew committed by the alleged offender in connection with the offence, when the offence is committed on board an aircraft registered in that State. This provision applies wherever the aircraft is situated at the time of the relevant acts, whether in the airspace of the State of registration, in the airspace of another State or outside the territory of any State.

Special provision is made for the case of aircraft which are subject to joint or international registration. Contracting States which establish joint air transport operating organizations or international operating agencies which operate aircraft which are subject to joint or international registration are required to designate for each aircraft the State among them which shall exercise jurisdiction and have the attributes of the State of registration for the purpose of this Convention. Notice of this designation must be communicated to I.C.A.O. which, in turn, will communicate the notice to all Contracting States (Article 5). This provision corresponds with Article 18 of the Tokyo Convention. However, in cases concerning joint air transport operating organizations or international operating agencies which operate aircraft which are subject to joint or international registration, the Hague Convention does not apply if the place of take-off and the place of actual landing of the aircraft on board which the offence is committed are situated within the territory of the same State if that State is one of the States participating in the operation of the aircraft. (Article 3(4).) This is an exception to the general rule stated in Article 3(3) which has been considered above.

(2) Aircraft landing in the territory of a contracting State with a hijacker on board

Article 4(1)(b) of the Convention requires each

contracting State to take such measures as may be necessary to establish its jurisdiction over the offence and any other act of violence against passengers or crew committed by the alleged offender in connection with the offence when the aircraft on board which the offence was committed lands in its territory with the alleged offender still on board. The provision contemplates the exercise of jurisdiction in a wide range of circumstances. It extends to conduct on board an aircraft whether registered in that State or not. Furthermore, the provision applies to conduct on board an aircraft which subsequently lands in a contracting State with a hijacker on board, without regard to the position of the aircraft at the time of the relevant acts. If the relevant acts took place on board an aircraft which was at that time in the territorial airspace of the State in which it subsequently landed, the jurisdiction exercised by the State of landing over such acts would not be an extra-territorial jurisdiction. This would normally be the case when a hijacking was successful because the offence would continue in the territorial air-space of the State of landing until the flight ended. However it would not be the case when an attempted hijacking was unsuccessful and the offence had ceased before the aircraft entered the air-space of the State of landing. Consequently, the provision seems to be sufficiently wide to envisage the exercise of jurisdiction over conduct which has no connection with the State exercising jurisdiction save for the possibly fortuitous fact that the aircraft subsequently lands there with the hijacker on board. For example, in a case where an aircraft registered in State A crewed by and carrying passengers of the nationality of State A is the subject of an attempted hijack by nationals of State A when the aircraft is in the air-space of State A or over the high seas and after the hijackers are overpowered the aircraft enters the air-space of State B and lands there, the Hague Convention contemplates the exercise of jurisdiction by State B. In this case there are present none of the traditional

jurisdictional linking factors on which the exercise of extra-territorial jurisdiction is generally explained. Consequently, the provision may be regarded as establishing a new basis for the exercise of extra-territorial jurisdiction, founded on a new jurisdictional link. The provision was, as might have been expected, the source of some controversy before the Legal Committee of I.C.A.O. (Legal Committee, 17th Session, pp. 50-52, 88). However, the measure is welcome in that it is likely to assist in plugging a number of jurisdictional gaps and is justifiable both by reference to the nature of the offence and to the fact that in such circumstances the State of landing is in the best position to apprehend and punish the wrongdoers.

- (3) Conduct on board aircraft leased without crew to a lessee who has his principal place of business or his permanent residence in the contracting State

Article 4(1)(c) of the Convention requires each contracting State to take such measures as may be necessary to establish its jurisdiction over the offence and any other act of violence against passengers or crew committed by the alleged offender in connection with the offence when the offence is committed on board an aircraft leased without crew to a lessee who has his principal place of business or, if the lessee has no such place of business, his permanent residence, in that State. This provision is intended to cast the net of jurisdiction even wider, so as to include conduct on board aircraft which, whether or not they are registered in a contracting State, are effectively operated by a person with his principal place of business or, if he has none, his permanent residence in a contracting State. In such circumstances the State from which the aircraft is operated may well have a more substantial connection with the operation of the aircraft and consequently a greater interest in the

exercise of jurisdiction than the State of registration. However, it is not entirely clear why the provision is limited to cases of aircraft without crew. While it is arguable that aircraft leased with crew might have a stronger connection with the State of registration, the State from which it is substantially operated would nevertheless retain a strong interest in exercising jurisdiction.

While the jurisdiction established in accordance with Article 4(1)(c) may be exercised in relation to intra-territorial acts, for example where the relevant conduct takes place on an aircraft leased without crew in the territorial air-space of the contracting State where the lessee has his principal place of business, it is clear that it also extends to extra-territorial activities. Furthermore, it envisages the possible exercise of an extra-territorial jurisdiction in circumstances where there are present none of the jurisdictional linking factors on which the exercise of extra-territorial jurisdiction is usually explained. Consequently, as in the case of Article 4(1)(b), the provision may be regarded as establishing a new basis for the exercise of extra-territorial jurisdiction founded on a new jurisdictional link.

(4) Alleged offender present in territory of a contracting State

Article 4(2) of the Convention requires each contracting State to take such measures as may be necessary to establish its jurisdiction over the offence in the case where the alleged offender is present in its territory and it does not extradite him to:

- (a) the State in which the aircraft on board which the offence was committed was registered;

- (b) a State in which the aircraft on board which the offence was committed landed with the alleged offender still on board; or
- (c) the State where a person to whom the aircraft on which the offence was committed was leased without crew, has his principal place of business or, if he has none, where he has his permanent residence.

This provision is intended to create a jurisdictional safety-net. Its effect is to require contracting States to extend their jurisdiction in such a way that even if a hijacker evades arrest in those States directly concerned with the hijacking he may be tried and convicted for the offence in any contracting State in which he is subsequently found. Since 100 States are currently parties to the Convention, the possibility of hijackers escaping prosecution is considerably reduced.

This provision is considerably wider than that contained in Article 4(1)(b) which applies only in the case of a hijacker landing in the territory of a contracting State on board the aircraft on which the offence was committed. The present provision is intended to apply in addition when a hijacker is subsequently found in a contracting State. The extension of extra-territorial jurisdiction envisaged by Article 4(2) is potentially enormous. As in the case of the other provisions considered above, the extra-territorial jurisdiction which it envisages is not limited to those cases where there is present one of the conventional jurisdictional linking factors which are normally invoked in support of the exercise of extra-territorial jurisdiction. Article 4(2) requires a contracting State to establish its jurisdiction in circumstances where there is no connection between the alleged offence and that State save that the

alleged offender is subsequently found there.

It has been suggested above that Article 4(1) and Article 4(2) require each contracting State to ensure that the ambit of its criminal law extends to the relevant conduct on board aircraft in the circumstances specified in those provisions so as to render such conduct an offence contrary to its law. The extension of the ambit of a State's criminal law so as to include the relevant conduct in the circumstances contemplated by Article 4(2) effectively requires each contracting State to establish in its municipal law an offence of hijacking which may be committed by any person on board any aircraft anywhere in the world. Such a result is achieved by the United Kingdom Hijacking Act 1971, for example, which provides:

"1(1) A person on board an aircraft in flight who unlawfully, by the use of force or by threats of any kind, seizes the aircraft or exercises control of it commits the offence of hijacking, whatever his nationality, whatever the State in which the aircraft is registered and whether the aircraft is in the United Kingdom or elsewhere..."

This provision is subsequently qualified in accordance with the Hague Convention but nevertheless establishes an offence of extremely wide ambit. It was necessary that the intended extra-territorial application of the provision be expressly stipulated in order to rebut the presumption against extra-territorial effect normally applied by English courts in interpreting domestic legislation.

It is, of course, the case that the obligation imposed by the Hague Convention on a contracting State to extend its jurisdiction to such circumstances is limited to cases where the contracting State does not extradite the alleged offender to one of the relevant States. However,

arrangements for the extradition or return of fugitive offenders are so incomplete and so imperfect that a contracting State could never be certain that it would be able to extradite an alleged hijacker apprehended in its territory. Furthermore, a contracting State in whose territory an alleged hijacker is apprehended may not receive requests from any of the relevant States for his extradition. Consequently, it seems that in order to comply with the requirements of the Convention contracting States must establish offences of an ambit as extensive as that of the offence created by section 1 of the United Kingdom Act.

In the result Article 4(2) comes very close to rendering the offence of hijacking an offence subject to universal jurisdiction. It appears that the conduct defined in Article 1 constitutes an offence contrary to the law of each of the contracting States regardless of the nationality of the actor, the State of registration of the aircraft on board which the alleged offence took place or its position at the relevant time. It is suggested that this enormous extension of the extra-territorial jurisdiction of contracting States is justifiable by reference to the nature of the offence of hijacking which necessarily imperils the common interests of all States in preserving the safety of civil aviation. Whether hijackers are or are not pirates in international law, they are without doubt *hostes humani generis*. The extension and the exercise of jurisdiction in the circumstances contemplated in Article 4 are essential if the Convention's stated objectives of deterring and punishing such activities are to be achieved.

Finally, in this context, reference must be made to Article 4(3) which provides that the Convention does not exclude any criminal jurisdiction exercised in accordance with national law. A similar provision is contained in

Article 3(3) of the Tokyo Convention. It is difficult to see why this provision was included in the Hague Convention and its effect is not entirely clear. It seems likely, however, that the provision merely seeks to emphasise that the jurisdictional provisions of the Convention are not intended to prejudice the other bases on which States have claimed to exercise jurisdiction over hijackers. Consequently the Convention does not prevent contracting States from exercising jurisdiction in circumstances not specified in the Convention.

As in the case of the Tokyo Convention, the Hague Convention makes no provision for priority of competing jurisdictions.

The effect of the jurisdictional provisions of the Hague Convention on non-contracting States

A further matter arises for consideration here. What effect, if any, do the jurisdictional provisions of the Hague Convention have on non-contracting States?

Whereas the Tokyo Convention applies only to conduct on board aircraft registered in a contracting State, the Hague Convention is not so limited by its terms. Article 1 establishes an offence which may be committed on board an aircraft in flight and which is not restricted to conduct on board an aircraft registered in a contracting State. Similarly Article 4(1)(b),(c) and Article 4(2), in setting out the circumstances over which contracting States are required to establish their jurisdiction, do not limit this requirement to conduct on board aircraft registered in a contracting State. Furthermore, the duty to extradite or to submit the case to the competent authorities for the purpose of prosecution imposed by Article 7 applies equally to conduct on board aircraft registered in contracting and

non-contracting States. The application of the Convention to aircraft registered in non-contracting States is established not only by the plain meaning of the Convention but also by its travaux préparatoires. It was the clear intention of the Hague Conference that the Convention should apply to all aircraft, wherever registered. (e.g. Hague Conference Vol. 1, para. 46) Similarly the Convention is intended to apply to the conduct of persons on board aircraft in flight, regardless of whether they are nationals of a contracting State.

It seems therefore that the Hague Convention may require a contracting State to exercise jurisdiction over a hijacker found in its territory in respect of activities which have no jurisdictional link with any State other than States which are not parties to the Convention. Let us take an extreme example. X, a national of State A, hijacks an aircraft registered in State B in the airspace of State C. He escapes and is subsequently arrested in the territory of State D. State A, State B and State C are not parties to the Hague Convention. State D is a party to the Hague Convention. In such circumstances, if State D does not extradite X it is obliged to submit the case to its competent authorities for the purpose of prosecution and those authorities must take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of State D (Article 7).

The exercise of jurisdiction by State D in such circumstances cannot be justified, as against State A, by reference to the provisions of the Hague Convention for it is a well-established rule of international law, now reflected in Article 34 of the Vienna Convention on the Law of Treaties, that a treaty creates neither obligations nor rights for States which are not parties thereto, without their consent. It is necessary to consider therefore whether the exercise of jurisdiction in such circumstances

against a national of a non-contracting State is in accordance with customary international law or whether it is prohibited. It is submitted that such a restriction upon the independence of States and their freedom to exercise jurisdiction in their own territory cannot be presumed. There is no general prohibition on the extension of a State's laws or the jurisdiction of its courts to persons outside its territory subject only to exceptions in defined cases. The position is, rather, that international law leaves a very wide measure of discretion to States in such matters, and it is limited only by certain prohibitive rules. There is no evidence to support the existence of any rule of customary law which would prohibit the exercise of jurisdiction in the circumstances contemplated in Article 4(1)(b)(c) and Article 4(2) of the Hague Convention. Furthermore, when one considers the nature of the offence over which jurisdiction is to be exercised, it seems highly improbable that a non-contracting State would protest against an exercise of jurisdiction in accordance with Article 4.

Duties of contracting States

When any of the acts which constitute the offence of hijacking within Article 1(a) have occurred or are about to occur, contracting States are under a duty to 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)). In such cases, any contracting State in which the aircraft or its passengers or crew are present must facilitate the continuation of the journey of the passengers and crew as soon as practicable and must, without delay, return the aircraft and its cargo to the persons lawfully entitled to possession (Article 9(2)). This provision closely resembles Article 11 of the Tokyo Convention.

A contracting State in the territory of which an alleged offender is present is required to make immediately a preliminary enquiry into the facts. (Article 6(2).) Upon being satisfied that the circumstances so warrant, a contracting State in the territory of which the offender or the alleged offender is present must take him into custody or take other measures to ensure his presence (Article 6(1)). It is difficult to explain the inclusion of the words "upon being satisfied that the circumstances so warrant..." for the obligation imposed by Article 7 to extradite an alleged offender or to submit the case to the competent authorities for the purpose of prosecution would suggest that in every case the circumstances warranted the taking of some measures to ensure the alleged offender's presence. Article 6 further provides that the custody or other measures shall be as provided in the law of the State. The application of a national standard as opposed to an international standard to the treatment of aliens has been considered in detail in the context of the Tokyo Convention and the conclusions stated there apply equally in relation to the Hague Convention. However, the following matters are particularly worthy of note in the context of the Hague Convention:

- (i) The national standard applies only to custody or other measures taken to ensure the presence of an alleged offender (Article 6(1));
- (ii) The custody or other measures to ensure the presence of an alleged offender may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted (Article 6(1));
- (iii) Any person in custody must be assisted in communicating immediately with the nearest

appropriate representative of the State of which he is a national (Article 6(3));

(iv) When a State has taken a person into custody it must immediately notify the fact that such person is in custody and the circumstances which warrant his detention to:

(a) the State of registration of the aircraft;

(b) where the alleged offence took place on board an aircraft leased without crew, the State where the lessee has his principal place of business, or, if he has none, his permanent residence;

(c) the State of nationality of the detained person;

(d) if it considers it advisable, any other interested States.
(Article 6(4).)

(iv) The findings of the preliminary inquiry must be promptly reported to the States listed in paragraph (4) above, with an indication whether it is intended to exercise jurisdiction. (Article 6(4).)

Article 7 is of central importance to the scheme of the Convention. It provides that a contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged without exception whatsoever

and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. The authorities are required to take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. The effect of this provision is that whenever an alleged offender is found in the territory of one of the 100 States which are currently parties to the Hague Convention, the State is bound either to extradite him or to submit the matter to its prosecuting authorities. As a result, no hijacker can find refuge in any of the States parties to the Hague Convention. The provision does not impose an absolute obligation to prosecute in such circumstances. It would perhaps be unreasonable to require States to abandon their discretion whether or not to prosecute in such circumstances. Nevertheless the requirement that the decision be taken in the same manner as in the case of ordinary offences of a serious nature under the law of that State renders it probable that such persons will be prosecuted in the vast majority of cases.

There is a duty on contracting States to afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offence or other acts of violence against passengers or crew committed by the alleged offender in connection with the offence. (Article 10(1).) However, this duty is without prejudice to any obligations arising under any other treaty relating to mutual assistance in criminal matters.

It should be noted that in the case of the provisions considered above there is a further exception to the general rule as to the application of the Convention. These provisions apply whatever the place of take-off or the place of actual landing of the aircraft, if the offender or the alleged offender is found in the territory of a State

other than the State of registration of that aircraft.
(Article 3(5).)

Each contracting State is under a duty to report to the Council of I.C.A.O. as promptly as possible, any relevant information in its possession concerning the circumstances in which a hijacking took place and the action taken to restore or preserve the control of the commander of the aircraft, to facilitate the continuation of the journey by the passengers and crew and to return the aircraft and its cargo to the persons lawfully entitled to possession. In addition, each contracting State is required to notify the Council of I.C.A.O. of any measures taken in relation to the offender or alleged offender, and, in particular, the results of any extradition proceedings or other legal proceedings.
(Article 11)

It is now necessary to consider the powers and duties of contracting States in the matter of extradition.

Extradition

Effective arrangements for the extradition or return of alleged hijackers are of the greatest importance if such activities are to be deterred and punished. However, the great increase in terrorist activities against aircraft in the late 1960s immediately revealed the inadequacy of existing extradition arrangements to meet this threat. There is no duty imposed by customary international law to surrender individuals accused or convicted of offences in other States. The surrender of such individuals is therefore dependent upon the existence of an extradition treaty or some similar arrangement, such as the scheme for the return of fugitive offenders which operates among Commonwealth States. However these arrangements for the extradition or return of alleged

offenders have been shown to be far from complete in that it has often been the case that no such arrangement existed between the State where the hijacker had taken refuge and the State seeking his extradition, thereby rendering his return impossible. The Hague Convention acknowledges this difficulty and attempts to remedy it by extending existing arrangements for extradition and by providing a basis for new arrangements.

The first method employed by the Convention is to deem the offence of hijacking, as defined in Article 1, to be included as an extraditable offence in any extradition treaty existing between contracting States.(Article 8(1).) As a general rule, States include in extradition treaties lists of offences in respect of which extradition may be requested. The effect of the provision is to amend all previously existing extradition treaties between contracting States so as to include the offence of hijacking, as an extraditable offence. In this way the provisions of one multilateral treaty serve to amend a number of bilateral treaties between States which are parties to the multilateral treaty. However, if such an amendment is to be effective in the law of a contracting State it may well require legislation so as to add the offence of hijacking to the offences which are extraditable under the law of that State.

Secondly, contracting States undertake to include the offence of hijacking as an extraditable offence in every future extradition treaty to be concluded between them. (Article 8(1).) The effect of the failure of contracting States to include such a provision in a subsequent extradition treaty between them is uncertain. It would clearly be a breach of the Hague Convention but it is doubtful whether such a provision should be deemed to be included in the later treaty, in the absence of clear words to that effect. Furthermore, it

should be noted that the provision applies only in relation to treaties subsequently concluded between parties to the Hague Convention; it has no application to extradition treaties subsequently concluded between a party to the Hague Convention and a non-contracting State.

Thirdly, the Convention itself supplies a new legal basis for extradition. It provides that if a contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another contracting State with which it has no extradition treaty, it may at its option consider the Hague Convention as the legal basis for extradition in respect of the offence of hijacking. (Article 8(2).) This is a novel approach to the problem. Whereas under the Tokyo Convention extradition was possible between contracting parties only if there existed an extradition treaty or comparable arrangement between them, the Hague Convention itself provides a substitute for such a treaty or arrangement. For the purposes of the extradition of alleged hijackers, the Hague Convention is a multilateral extradition treaty which can be invoked when there is available no other legal basis for extradition. However, the Hague Convention may discharge this function only at the option of the State to which the request for extradition is addressed. If the Convention is invoked in this way, the extradition of the alleged offender must, nevertheless, comply with the other conditions for extradition stipulated by the law of the State to which the request was addressed. This provision imposes no obligation on a contracting State, to which a request for extradition is addressed, to extradite the alleged offender. However, if it fails to do so it must then submit the case to its competent authorities for the purpose of prosecution in accordance with Article 7.

Fourthly, the Convention contains a comparable provision which applies to contracting States which do not make

extradition conditional on the existence of a treaty. The Convention provides that such States shall recognise the offence of hijacking as an extraditable offence between themselves. (Article 8(3).) The Hague Convention therefore provides the basis of a multilateral arrangement for the extradition of hijackers. Once again the conditions for extradition laid down by the national law of the contracting State to which the request is addressed must be complied with. Furthermore, the arrangement may be invoked only at the option of the contracting State to which the request is addressed, but in the event of a failure to extradite that State is obliged by Article 7 to submit the case to its competent authorities for the purpose of prosecution.

A further difficulty experienced in recent attempts to secure the extradition of alleged hijackers has been that States have frequently invoked the political nature of the offence of hijacking as a ground for refusing to surrender hijackers. This is hardly surprising when one considers that a substantial proportion of offences of hijacking are committed from a political motive or with the purpose of escaping from a political system in force in a particular State and that hijackers frequently seek to turn to their advantage a political antipathy between the different States involved. However the Hague Convention does not deal with the question of the political offence exception to extradition. This omission may be regarded, *prima facie*, as a major weakness in the treaty. This would, no doubt be so if it was intended that the Convention should render the extradition of hijackers mandatory. However, this is not the case. Although the delegates from the Eastern bloc argued at the Hague Convention in favour of mandatory extradition, such a course was not adopted. While the Convention is likely to be highly effective in extending existing arrangements for extradition and in establishing new arrangements, it clearly contemplates

that extradition is only one possible course of action available to a contracting State in whose territory an alleged hijacker is found. This is demonstrated by Article 7 which imposes a duty to submit the case to the competent authorities for the purpose of prosecution if the alleged offender is not extradited. This seems highly realistic for it is clear that in the case of an offence such as hijacking, which is likely in a large number of instances to possess political undertones, a Convention imposing a mandatory requirement of extradition would be unlikely to gain general support in the international community. The position adopted in the Convention whereby a contracting State will generally have the choice of extraditing an alleged hijacker found in its territory or prosecuting him itself is a workable compromise which has already received the assent of a large majority of States.

Extradition treaties frequently provide that the offence in respect of which the return of the alleged offender is requested must have been committed in the territory of the State seeking his extradition. Such provisions are likely to give rise to difficulty in the case of requests for the extradition of hijackers. For example, the relevant offence may have been committed on board an aircraft registered in the State requesting extradition at a time when it was over the high seas or in the airspace of another State. This difficulty is overcome by Article 8(4) of the Hague Convention which provides that the offence of hijacking shall be treated, for the purpose of extradition between contracting States, as if it had been committed not only in the place in which it occurred but also in the territories of:

- (a) the State of registration of the aircraft;
- (b) the State in which the aircraft lands with the alleged offender still on board;

(c) in the case of an aircraft leased without crew, the State in which the lessee has his principal place of business or, if he has none, his permanent residence.

By the use of this fiction, problems arising from the actual location of the offence are solved in the case of a request for extradition made by any of these three States.

We have seen that the Hague Convention makes no provision for priority in the exercise of jurisdiction by contracting States. Similarly, the Convention does not attempt to establish a scheme of priority in the matter of extradition. A United States proposal that priority should be given to a request for extradition made by the State of registration of the aircraft on which the alleged offence was committed was not included in the Convention. (Hague Conference para. 29) However, this omission is hardly a serious defect in the scheme of the Hague Convention.

Finally in this context it should be noted that the provisions dealing with extradition constitute a further exception to the general rule as to the scope of the Convention. These provisions apply whatever the place of take-off or the place of actual landing of the aircraft on board which the offence was allegedly committed, if the offender or the alleged offender is found in the territory of a State other than the State of registration of that aircraft. (Article 3(5).)

Final Clauses

The Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America are the Depositary

Governments of the Hague Convention. The Depositary Governments are required to inform promptly all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of entry into force of the Convention and other notices (Article 13).

The procedures to be followed in acceding to the Hague Convention are considered below.

A contracting State may denounce the Convention by written notification to the Depositary Governments. Denunciation takes effect six months following the date on which notification is received by the Depositary Governments. (Article 14).

The Convention provides that any dispute between two or more contracting States concerning the interpretation or application of the Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months of 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. Article 12(1).) However, a contracting State may at the time of signature, ratification or accession enter a reservation declaring that it does not consider itself bound by Article 12(1). Such a reservation operates on a reciprocal basis.(Article 12(2).) A contracting State may withdraw a reservation by notification to the Depositary Governments. (Article 12(3).)

Procedures on accession

The Hague Convention is open to accession at any time by any State which did not sign the Convention before it came into force on 14th October 1971. (Article 12(1).)

The instrument of accession must be deposited with the Depositary Governments, namely the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America. (Article 13(2).) The Convention enters into force for an acceding State thirty days following the date of deposit of its instrument of accession. (Article 13(4).) The Depositary Governments are required promptly to inform all signatory and acceding States of the date of deposit of each instrument of accession. (Article 13(5).)

Unlike the Tokyo Convention, the Hague Convention includes no prohibition on reservations. Consequently, before accession can be effected it will be necessary to decide whether the accession is to be subject to a reservation. If it is intended to accede subject to a reservation, the reservation should be communicated in writing to the Depositary Governments not later than the time of accession. The most convenient course is that the instrument of accession should include the terms of the reservation.

A number of newly independent Commonwealth States are entitled to succeed to the Hague Convention which was ratified by the United Kingdom "in respect of the United Kingdom of Great Britain and Northern Ireland and Territories under the territorial sovereignty of the United Kingdom as well as the British Solomon Islands Protectorate." The Bahamas and Papua New Guinea have both formally succeeded to the Convention. It is not possible in the context of this document to consider in detail the question of State succession in respect of treaties. However, it should be noted that the position of each newly-independent State in this regard, and in particular the question of provisional succession, will vary according to the practice adopted by that State on independence.

Legislation will be necessary to give effect to the Convention in municipal law. In the United Kingdom this was provided by the Hijacking Act 1971 (1971 c.70). A draft Bill is produced in Appendix 6.

By virtue of the Hijacking Act 1971 (Overseas Territories) Order 1971 (S.I. 1971 No. 1739) as amended by S.I. 1973 No. 1893 sections 1,2,3,4 and 5 of the Hijacking Act 1971 as modified by those Statutory Instruments were extended to a number of Territories including the following which have since attained independence:

British Honduras	Gilbert and Ellice Islands
British Solomon Island Protectorate	Colony Seychelles

CHAPTER THREE

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF CIVIL AVIATION, MONTREAL, 23RD SEPTEMBER 1971

The offence established by the Hague Convention requires a seizure of an aircraft or an exercise of control over an aircraft, or an attempt to perform either of these acts. It may be committed only by a person or persons on board the aircraft which is the object of the actual or attempted seizure or exercise of control. Similarly, the conduct of an accomplice must take place on board an aircraft in flight if it is to constitute an offence within the Hague Convention. The effect of these provisions is to limit severely the scope of the offence under the Hague Convention. In particular they exclude from its ambit cases where force is applied from outside the aircraft. Unhappily, such conduct has occurred frequently and an international convention was clearly required to co-ordinate means for the deterrence and punishment of such activities.

I.C.A.O. estimates that between 1949 and 1970, 22 aircraft were destroyed and over 400 persons killed as a result of the detonation of explosives on board aircraft. (I.C.A.O. Doc. A17-WP/25.) Two separate incidents on the same day, 21 February 1970, resulted in an extraordinary session of the I.C.A.O. Assembly at Montreal in June 1970 in order to consider means of combating unlawful acts against the safety of civil aviation. The Assembly instructed the Legal Committee to prepare a draft Convention. A draft was prepared at a meeting in London in September and October 1970 and submitted to a diplomatic conference held in Montreal in September 1971. On 23 September 1971 the conference adopted the Convention for the Suppression of Unlawful Acts against

the Safety of Civil Aviation and it was signed by 31 States. The Convention entered into force on 26 January 1976, thirty days after the deposit of the tenth instrument of ratification. Its text appears as Appendix 7.

Ninety-six States are currently parties to the Montreal Convention. A further ten States have signed the Convention but have not yet ratified it. The United Kingdom ratified the Convention on 25 October 1973 and that ratification was expressed to be "in respect of the United Kingdom of Great Britain and Northern Ireland and Territories under the territorial sovereignty of the United Kingdom as well as the British Solomon Islands Protectorate." A number of these territories have since attained independence. Papua New Guinea has formally succeeded to the Convention. A number of other newly independent Commonwealth States are entitled to succeed to the Convention. Certain other newly independent Commonwealth States have acceded to the Convention. A complete list of signatures, ratifications, accessions and successions is set out in Appendix 8.

Object and purpose of the Convention

In the preamble to the Convention the contracting States express their grave concern at the occurrence of unlawful acts against the safety of civil aviation which jeopardize the safety of persons and property, seriously affect the operation of air services, and undermine confidence in the safety of civil aviation. The preamble also refers to the urgent need to provide appropriate measures for the punishment of offenders, for the purpose of deterring such acts.

The approach adopted by the Montreal Convention is very similar to that of the Hague Convention and many of their provisions are in identical terms. The Montreal Convention

begins by establishing a number of offences. (Article 1.) It then imposes an obligation on each contracting State to make the offences punishable by severe penalties. (Article 3.) Each contracting State is required to take such measures as may be necessary to establish its jurisdiction over the offence and any other act of violence against the passengers or crew of an aircraft in certain defined circumstances. (Article 4.) Each contracting State, if satisfied that the circumstances so warrant is under a duty to take an alleged offender into custody or to take other measures to secure his presence. (Article 6.) A contracting State in the territory of which the alleged offender is found is under a duty to submit the case to its competent authorities for the purpose of prosecution, if it does not extradite him. (Article 7.) The Convention also deals with questions of extradition. (Article 8.)

The Convention is intended to apply only to civil aircraft and provides that it shall not apply to aircraft used in military, customs or police services. (Article 4(1).) This provision is identical with those contained in Article 1(4) of the Tokyo Convention and Article 3(2) of the Hague Convention.

Generally, the Convention applies only in the following cases:

1. The Convention applies if the place of take-off and the place of landing, actual or intended, of the aircraft is situated outside the territory of the State of registration of the aircraft or if the offence is committed in the territory of a State other than the State of registration of the aircraft. (Article 4(2).) This provision is slightly wider than the

comparable provision in the Hague Convention (Article 3(3)) in that it applies if either the actual or intended place of landing is situated outside the territory of the State of registration. The provision in the Montreal Convention would also extend its application to conduct in relation to an aircraft passing through the airspace of another State while travelling between two points in the State of registration. If these requirements are satisfied it is, however, immaterial whether the aircraft was engaged on an international or a domestic flight.

2. The Convention applies if the offender or alleged offender is found in the territory of a State other than the State of registration of the aircraft. (Article 4(3).) This is the case even if the places of take-off and landing, actual or intended, are situated in the State of registration of the aircraft and the offence is committed in the territory of the State of registration.

To these rules as to the applicability of the Convention there are two important exceptions:

1. In the case of the offence created by Article 1(1)(d) (destroying or damaging air navigation facilities) the Convention applies only if the air navigation facilities are used in international air navigation. (Article 4(5).)
2. Special provision is made for joint air

transport operating organizations or international operating agencies which operate aircraft which are subject to joint or international registration. With respect to States which establish such organizations or agencies, the Convention does not apply, save in the case of the offence created by Article 1(1)(d) which is governed by the rule stated in the preceding paragraph, if the places of take-off and landing, actual or intended, are situated within the territory of the same State and that State is one which has established the organisation or agency. However the Convention will apply if the offender or alleged offender is subsequently found in the territory of a State other than that State. (Article 4(4).)

The Offences

Article 1(1) of the Montreal Convention provides:

- "1. Any person shall be guilty of an offence if he unlawfully and intentionally:
- (a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or
 - (b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or
 - (c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or

- (d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or
- (e) communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight."

Under Article 3 each contracting State undertakes to make the offences punishable by severe penalties.

It is convenient to consider each of these offences in turn.

- (a) A person commits an offence within Article 1(1)(a) if he unlawfully and intentionally performs an act of violence against a person on board an aircraft in flight which is likely to endanger the safety of the aircraft. This provision reflects the fact that the principal concern of the Convention is the safety of civil aviation. The act of violence must be likely to endanger the safety of the aircraft.

The act of violence must be directed against a person on board an aircraft in flight but in contrast to the position under the Hague Convention the actor need not necessarily be on board the aircraft at the time of the act. Thus the provision would extend to the application of violence against persons on board an aircraft in flight from outside the aircraft.

As in the case of the other offences created by the Montreal Convention the conduct must be unlawful. This requirement

excludes from the scope of the offence conduct which is legally justifiable or done with legal authority. It is unclear which system of law should govern such questions. However, it seems that such conduct would certainly fall outside the scope of the offence if it was justifiable under the law of the State of registration.

The requirement that the act should be intentional also applies in the case of all five offences. However it is clear from the wording of Article 1(1) that the requirement applies only to the acts performed and not to their consequences. If the relevant acts were intentionally performed it is immaterial whether the consequences were intended consequences. Furthermore, save in the case of the offences established under Article 1(1) (b)(e), it is not necessary that the consequences should actually occur; it is sufficient that they are likely consequences.

An aircraft is in flight for the purposes of the Montreal Convention at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation. In the case of a forced landing, the flight is deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board. (Article 2(a).) This definition is identical to that employed in the Hague Convention and conforms with the wider of the

two definitions employed in the Tokyo Convention.

- (b) A person commits an offence within Article 1(1)(b) if he unlawfully and intentionally destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight. The destruction or damage must occur at a time when the aircraft is in service. An aircraft is in service for the purposes of the Montreal Convention from the beginning of the preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing. The period during which an aircraft is in service includes the entire period during which it is in flight within the meaning of the Convention. (Article 2(b).) The period during which an aircraft is to be regarded as in service is unduly restricted and it is particularly regrettable that the offence created by Article 1(1)(b) does not extend to acts of sabotage against aircraft performed before this period commences. However, it is possible that a person might at a time before the aircraft is in service set in train a course of events which result in destruction or damage when the aircraft is in service. This, it seems, would constitute an offence within Article 1(1)(b).

The offence is not limited to the conduct of persons on board the aircraft. The offence includes acts of sabotage to an aircraft in service before the flight commences, provided the aircraft is in service, and an attack on

an aircraft in flight from another aircraft.

In the case of the infliction of damage which falls short of destruction, the damage must either render the aircraft incapable of flight or be likely to endanger its safety in flight. In the latter case it is not necessary that its safety in flight should in fact be endangered.

(c) A person commits an offence within Article 1(1)(c) if he unlawfully and intentionally places or causes to be placed on an aircraft in service, by any means whatsoever a device or substance which is likely:

- (i) to destroy that aircraft; or
- (ii) to cause damage to it which renders it incapable of flight; or
- (iii) to cause damage to it which is likely to endanger its safety in flight.

This provision is primarily intended to cover cases where explosives are placed on board aircraft. The words "device or substance" are probably sufficiently wide to include most cases which are likely to arise. It seems that the offence may be committed by introducing the device or substance into the aircraft or by attaching it to the outside of the aircraft. However, the provision requires that the device or substance

be placed or caused to be placed on an aircraft in service. It is not clear if an offence is committed when the device or substance is placed on an aircraft before the period of service commences and remains there during the period of service. The better view seems to be that it is. If it is not, it seems that scope of the offence is severely limited and that the restricted definition of "in service" creates an important gap in the scheme of the Convention.

(d) A person commits an offence within Article 1(1)(d) if he unlawfully and intentionally destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight. The air navigation facilities must be used for international air navigation. This provision is largely self-explanatory. It seems that the air navigation facilities may be on the ground, at an airport or elsewhere, and, possibly, on board aircraft. In order that the offence should be committed it is not necessary that the safety of an aircraft in flight should in fact be endangered; it is sufficient that that is a likely consequence. The provision is probably sufficiently wide to include the jamming of radio signals emitted from air navigation facilities.

(e) A person commits an offence within Article 1(1)(e) if he communicates information which he knows to be false, thereby endangering the

safety of an aircraft in flight. This provision is intended to cover cases where false signals are relayed to an aircraft with the purpose of diverting it from its intended course. However, it should be noted that such conduct will constitute an offence within Article 1(1)(e) only if the safety of an aircraft in flight is endangered thereby.

By virtue of Article 2(a) any person who attempts to commit any of the offences considered above also commits an offence.

The Convention makes express provision for the liability of accomplices. An accomplice of a person who commits or attempts to commit an offence under the Convention himself commits an offence. (Article 2(b).) Whereas under the Hague Convention the conduct of the accomplice must take place on board the aircraft if it is to constitute an offence, there is no such restriction under the Montreal Convention.

Jurisdiction

The jurisdictional provisions of the Montreal Convention are very similar to those of the Hague Convention.

Each contracting State is required to take such measures as may be necessary to establish its jurisdiction over the offences in the following cases:

- (i) When the offence is committed against or on board an aircraft registered in that State (Article 5(1)(b));

(ii) When the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board (Article 5(1)(c));

(iii) When the offence is committed against or on board an aircraft leased without crew to a lessee who has his principal place of business; or

if the lessee has no such place of business, his permanent residence, in that State (Article 5(1)(d)).

These three situations correspond to those in Article 4(1)(a), (b) and (c) of the Hague Convention which have been considered in detail above. However, whereas under the Hague Convention the offence could be committed only by a person on board an aircraft, the offences under the Montreal Convention are not so limited. Consequently the jurisdictional provisions under the Montreal Convention are wider in that they require contracting States to establish their jurisdiction in circumstances where the offence is committed against an aircraft by a person or persons not on board the aircraft. The provision appears to include conduct which takes place exclusively in the territory of another State. For example, a contracting State is required to establish its jurisdiction over the offences committed when an aircraft registered in that State is attacked by the use of ground-launched missiles while flying through the airspace of another State.

The fact that the offences under the Montreal Convention may be committed by a person or persons not on board the aircraft is reflected by Article 5(1)(a) which requires contracting States to take such measures as may

be necessary to establish their jurisdiction over the offences when committed in their territory.

The Montreal Convention imposes a duty on each contracting State to establish its jurisdiction over offences in the case where the alleged offender is present in its territory and it does not extradite him to:

- (a) the State in whose territory the offence was committed; or
- (b) the State or registration of the aircraft; or
- (c) the State in which the aircraft on board which the offence was committed landed with the alleged offender still on board; or
- (d) the State where a person, to whom the aircraft on which the offence was committed was leased without crew, has his principal place of business or, if he has none, where he has his permanent residence. (Article 5(2).)

This provision corresponds closely to Article 4(2) of the Hague Convention which has been considered in detail above. It should be noted, however, that the offences to which Article 5(2) relates do not include the offences created by Article 1(1)(d) (destruction of or damage to air navigation facilities or interference with their operation) or Article 1(1)(e) (communication of information known to be false).

In the draft Convention it was proposed that the State in which the effects of the offences were felt should also be required to establish its jurisdiction. This proposal was not accepted. While an effects theory is

frequently invoked in certain jurisdictions, especially in the United States, as a basis of jurisdiction it is suggested that it is inherently vague and ill-defined and that its omission from the Montreal Convention is welcome. The detailed jurisdictional provisions of the Convention appear to be sufficiently wide in their ambit to meet the mischief contemplated by the Convention.

The Convention expressly provides that its jurisdictional provisions do not exclude any criminal jurisdiction exercised in accordance with national law. (Article 5(3).) This provision corresponds with Article 4(3) of the Hague Convention and Article 3(3) of the Tokyo Convention.

As in the case of the Tokyo Convention and the Hague Convention, the Montreal Convention makes no provision for priority of competing jurisdictions.

Duties of contracting States

Contracting States are required, in accordance with international and national law, to endeavour to take all practicable measures for the purpose of preventing the offences. (Article 10(1).) The duties of contracting States in relation to the onward journey of passengers and crew and in relation to the return of aircraft and cargo to those persons lawfully entitled to possession are identical to those under Article 9(2) of the Hague Convention. (Article 10(2).)

The duties of contracting States in the matter of the custody of alleged offenders, preliminary inquiries, and communication with other States are virtually identical to those under the Hague Convention. (Article 6.)

Article 7 provides that a contracting State in whose territory the alleged offender is found shall, if it does not extradite him, be obliged without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. (Article 7.) This provision is identical to that in the Hague Convention.

Article 11 which governs mutual assistance in criminal proceedings is virtually identical to Article 10 of the Hague Convention.

The duties of contracting States in the matter of reporting to I.C.A.O. correspond exactly with those under the Hague Convention (Article 13). The parallel provisions of the Hague Convention have been considered in detail above.

Contracting States which have reason to believe that an offence will be committed are required to furnish any relevant material in their possession to those States which it believes are required to establish their jurisdiction over the intended offence in accordance with Article 5(1). (Article 12.)

Contracting States which establish joint air transport operating organisations or international operating agencies, which operate aircraft which are subject to joint or international registration are required to designate which State shall have the attributes of the State of registration for the purpose of the Convention. (Article 9.) Notice of this designation must be given to I.C.A.O which is required to communicate it to other contracting States.

Extradition

The provisions of the Montreal Convention in

relation to extradition (Article 8) are identical to those contained in Article 8 of the Hague Convention which has been considered in detail above. The conclusions stated there apply equally to the Montreal Convention.

Final Clauses

The Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America are the Depositary Governments of the Hague Convention. The Depositary Governments are required to inform promptly all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of entry into force of the Convention and other notices.(Article 15(5).)

The procedures to be followed in acceding to the Hague Convention are considered below.

A contracting State may denounce the Convention by written notification to the Depositary Governments. Denunciation takes effect six months following the date on which notification is received by the Depositary Governments (Article 16).

The Convention provides that any dispute between two or more contracting States concerning the interpretation or application of the 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 organisation 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, (Article 14(1).) However, a contracting State may

at the time of signature, ratification or accession enter a reservation declaring that it does not consider itself bound by Article 14(1). Such a reservation operates on a reciprocal basis (Article 14(2).) A contracting State may withdraw a reservation by notification to the Depositary Governments. (Article 14(3).)

Procedures on accession

The Montreal Convention is open to accession at any time by any State which did not sign the Convention before it came into force on 26 January 1976. (Article 15(1).) The instrument of accession must be deposited with the Depositary Governments, namely the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America. (Article 15(2).) The Convention enters into force for an acceding State thirty days following the date of deposit of its instrument of accession. (Article 13(4).)

Unlike the Tokyo Convention, the Hague Convention includes no prohibition on reservations. Consequently, before accession can be effected it will be necessary to decide whether the accession is to be subject to a reservation. If it is intended to accede subject to a reservation, the reservation should be communicated in writing to the Depositary Governments not later than the time of accession. The most convenient course is that the instrument of accession should include the terms of the reservation.

A number of newly independent Commonwealth States are entitled to accede to the Hague Convention which was ratified by the United Kingdom "in respect of the United Kingdom of Great Britain and Northern Ireland and Territories under the territorial sovereignty of the United Kingdom as

well as the British Solomon Islands Protectorate." Papua New Guinea has formally succeeded to the Convention. It is not possible in the context of this document to consider in detail the question of State succession in respect of treaties. However, it should be noted that the position of each newly-independent State in this regard, and in particular the question of provisional succession, will vary according to the practice of that State on independence.

Legislation will be necessary to give effect to the Convention. In the United Kingdom this was provided by the Protection of Aircraft Act 1973 (1973 c.47). A draft Bill is produced in Appendix 9.

By virtue of the Protection of Aircraft Act (Overseas Territories) Order 1973 (S.I. 1973 No. 1757) Part 1 and sections 19 and 26 of the Protection of Aircraft Act 1973 as modified and adapted by that Statutory Instrument were extended to a number of Territories including the following which have since attained independence:

Belize	Gilbert and Ellice Islands
British Solomon Islands	Colony
Protectorate	Seychelles

Appendix 1: Tokyo 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 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 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 not apply to 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 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 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) 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.

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 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 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.

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 communicate the notice to all States Parties to this Convention.

Chapter VII—Final Clauses

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 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.

Appendix 2CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS
COMMITTED ON BOARD AIRCRAFT, SIGNED AT TOKYO ON 14 SEPTEMBER 1963*

<u>States</u>	<u>Date of Signature</u>	<u>Date of Deposit of Instruments of Ratification or Accession</u>	<u>Effective Date</u>
Afghanistan		15 April 1977	14 July 1977
Argentina		23 July 1971	21 October 1971
Australia		22 June 1970	20 September 1970
Austria		7 February 1974	8 May 1974
Bahamas			10 July 1973(1)
Bangladesh		25 July 1978	23 October 1978
Barbados	25 June 1969	4 April 1972	3 July 1972
Belgium	20 December 1968	6 August 1970	4 November 1970
Bolivia		5 July 1979	3 October 1979
Botswana		16 January 1979	16 April 1979
Brazil	28 February 1969	14 January 1970	14 April 1970
Burundi		14 July 1971	12 October 1971
Canada	4 November 1964	7 November 1969	5 February 1970
Chad		30 June 1970	28 September 1970
Chile		24 January 1974	24 April 1974
China		14 November 1978	12 February 1979(2)(3)
Colombia	8 November 1968	6 July 1973	4 October 1973
Congo, People's Rep. of	14 September 1963	13 November 1978	11 February 1979
Costa Rica		24 October 1972	22 January 1973
Cyprus		31 May 1972	29 August 1972
Denmark	21 November 1966	17 January 1967	4 December 1969
Dominican Republic		3 December 1970	3 March 1971
Ecuador	8 July 1969	3 December 1969	3 March 1970
Egypt, Arab Rep. of		12 February 1975(2)	13 May 1975
El Salvador		13 February 1980	13 May 1980
Ethiopia		27 March 1979(2)	25 June 1979
Fiji			10 October 1970(4)
Finland	24 October 1969	2 April 1971	1 July 1971
France	11 July 1969	11 September 1970	10 December 1970
Gabon		14 January 1970	14 April 1970
Gambia		4 January 1979	4 April 1979
Germany, Federal Republic of	14 September 1963	16 December 1969	16 March 1970
Ghana		2 January 1974	2 April 1974
Greece	21 October 1969	31 May 1971	29 August 1971

* Entered into force on 4 December 1969, in accordance with Article 21, paragraph 1.

APPENDIX 2

<u>States</u>	<u>Date of Signature</u>	<u>Date of Deposit of Instruments of Ratification or Accession</u>	<u>Effective Date</u>
Grenada		28 August 1978	26 November 1978
Guatemala	14 September 1963	17 November 1970(2)	15 February 1971
Guyana		20 December 1972	19 March 1973
Holy See	14 September 1963		
Hungary		3 December 1970(2)	3 March 1971
Iceland		16 March 1970	14 June 1970
India		22 July 1975(2)	20 October 1975
Indonesia	14 September 1963	7 September 1976(2)	6 December 1976
Iran		28 June 1976	29 September 1976
Iraq		15 May 1974(5)	13 August 1974
Ireland	20 October 1964	14 November 1975	12 February 1976
Israel	1 November 1968	19 September 1969	18 December 1969
Italy	14 September 1963	18 October 1968	4 December 1969
Ivory Coast		3 June 1970	1 September 1970
Japan	14 September 1963	26 May 1970	24 August 1970
Jordan		3 May 1973	1 August 1973
Kenya		22 June 1970	20 September 1970
Kuwait		27 November 1979(6)	25 February 1980
Lao People's Democratic Republic		23 October 1972	21 January 1973
Lebanon		11 June 1974	9 September 1974
Lesotho		28 April 1972	27 July 1972
Liberia	14 September 1963		
Luxembourg		21 September 1972	20 December 1972
Libian Arab Jamahiriya		21 June 1972	19 September 1972
Madagascar	2 December 1969	2 December 1969	2 March 1970
Malawi		28 December 1972	28 March 1973
Mali		31 May 1971	29 August 1971
Mexico	24 December 1968	18 March 1969	4 December 1969
Mauritania		30 June 1977	28 September 1977
Morocco		21 October 1975(7)	19 January 1976
Nepal		15 January 1979	15 April 1979
Netherlands, Kingd. of the	9 June 1967	14 November 1969(8)	12 February 1970
New Zealand		12 February 1974	13 May 1974
Nicaragua		24 August 1973	22 November 1973
Niger	14 April 1969	27 June 1969	4 December 1969
Nigeria	29 June 1965	7 April 1970	6 July 1970

<u>States</u>	<u>Date of Signature</u>	<u>Date of Deposit of Instrument Ratification or Accession</u>	<u>Effective Date</u>
Norway	19 April 1966	17 January 1967	4 December 1969
Oman		9 February 1979(2-9)	10 May 1977
Pakistan	6 August 1965	11 September 1973	10 December 1973
Panama	14 September 1963	16 November 1970	14 February 1971
Papua New Guinea			16 September 1975(2-10)
Paraguay		9 August 1971	7 November 1971
Peru		12 May 1978(2)	10 August 1978
Philippines	14 September 1963	26 November 1965	4 December 1969
Poland		19 March 1971(2)	17 June 1971
Portugal	11 March 1964	25 November 1964	4 December 1969
Republic of Korea	8 December 1965	19 February 1971	20 May 1971
Romania		16 February 1974(2)	16 May 1974
Rwanda		17 May 1971	15 August 1971
Saudi Arabia	6 April 1967	21 November 1969	19 February 1970
Senegal	20 February 1964	9 March 1972	7 June 1972
Seychelles		4 January 1979	4 April 1979
Sierra Leone		9 November 1970	7 February 1971
Singapore		1 March 1971	30 May 1971
South Africa		26 May 1972(2)	24 August 1972
Spain	27 July 1964	1 October 1969	30 December 1969
Sri Lanka		30 May 1978	28 August 1978
Suriname			25 November 1975(11)
Sweden	14 September 1963	17 January 1967	4 December 1969
Switzerland	31 October 1969	21 December 1970	21 March 1971
Syrian Arab Republic		31 July 1980(2)	29 October 1980
Thailand		6 March 1972	4 June 1972
Togo		26 July 1971	24 October 1971
Trinidad and Tobago		9 February 1972	9 May 1972
Tunisia		25 February 1975(2)	26 May 1975
Turkey		17 December 1975	16 March 1976
United Arab Emirates		16 April 1981	15 July 1981(13)
United Kingdom	14 September 1963	29 November 1968(12)	4 December 1969
United States	14 September 1963	5 September 1969	4 December 1969
Upper Volta	14 September 1963	6 June 1969	4 December 1969
Uruguay		26 January 1977	26 April 1977
Venezuela	13 March 1964		
Viet-Nam, Socialist Republic of		10 October 1979	8 January 1980
Yugoslavia	14 September 1963	12 February 1971	13 May 1971
Zambia		14 September 1971	13 December 1971
Zaire, Republic of		20 July 1977	18 October 1977

APPENDIX 2

- (1) Declaration dated 15 May 1975 by Bahamas that it considers to be bound to the said Convention by virtue of the ratification of the United Kingdom and pursuant to customary international law. The Commonwealth of the Bahamas attained independence on 10 July 1973.
- (2) Reservation: Does not consider itself bound by Article 24, paragraph 1, of the Convention.
- (3) The Instrument of Accession contains the following statement: "The Chinese Government declares illegal and null and void the signature and ratification by the Chaing clique usurping the name of China in regard to the above mentioned Convention".
- (4) Declaration dated 18 January 1972 by Fiji that it succeeded, upon independence, (whereof the date was 10 October 1970) to the rights and obligations of the United Kingdom in respect of this Convention.
- (5) Accession by the Republic of Iraq to the Convention shall, however, in no way signify recognition of Israel or entry into any relations with it.
- (6) It is understood that the accession to the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo, 1963, does not mean in any way recognition of Israel by the State of Kuwait. Furthermore, no treaty relation will arise between the State of Kuwait and Israel.
- (7) "In case of a dispute, all recourse must be made to the International Court of Justice on the basis of the unanimous consent of the parties concerned".
- (8) Declaration: "...the Convention, with respect to the Kingdom of the Netherlands, shall not enter into force for Suriname and/or the Netherlands Antilles until the ninetieth day after the date on which the Government of the Kingdom of the Netherlands will have notified the International Civil Aviation Organization that in Suriname and/or in the Netherlands Antilles the necessary steps for giving effect to the provisions of the above mentioned Convention have been taken".

Note: On 4 June 1974 a Declaration dated 10 May 1974 was deposited with the International Civil Aviation Organization by the Government of the Kingdom of the Netherlands stating that the necessary steps for giving effect to the provisions of the Convention have been taken in regard to making the Convention applicable to Suriname and the Netherlands Antilles. Accordingly, the Convention takes effect for Suriname and the Netherlands Antilles on 2 September 1974.

- (9) The accession by the Government of the Sultanate of Oman to the Convention does not mean or imply, and shall not be interpreted as recognition of Israel generally or in the context of this Convention.
- (10) Declaration dated 6 November 1975 by Papua New Guinea that "it desires to be treated as a party in its own right to the said Convention", which entered into force for Australia on the twentieth day of September 1970, and has applied to the Territory of Papua and Trust Territory of New Guinea". Papua New Guinea attained independence on 16 September 1975.
- (11) The Instrument of Succession was deposited with ICAO on 10 September 1979. Prior to that date the provisions of the Convention applied to Suriname by virtue of a declaration dated 10 May 1974 by the Government of the Kingdom of the Netherlands. The Republic of Suriname attained independence on 25 November 1975. (See also footnote 8).
- (12) Declaration: "...the provisions of the Convention shall not apply in regard to Southern Rhodesia unless and until the Government of the United Kingdom inform the International Civil Aviation Organization that they are in a position to ensure that the obligations imposed by the Convention in respect of that territory can be fully implemented."
- (13) Reservation: "In accepting the said Convention, the Government of the United Arab Emirates takes the view that its acceptance of the said Convention does not in any way imply its recognition of Israel, nor does it oblige to apply the provisions of the Convention in respect of the said Country".

Appendix 3: Draft Model Bill¹

An Act to make provision with a view to the accession on behalf of (.....)² to the Convention on Offences and certain other Acts committed on board Aircraft, signed at Tokyo on 14th September, 1963, and for purposes connected therewith.

Be it enacted as follows:-

Short title and commencement

1. This Act may be cited as the Tokyo Convention Act, 198_, and shall come into operation on (.....)³.

Interpretation

2. (1) In this Act, unless the context otherwise requires -
 - "aircraft" means any aircraft, whether or not a (.....)² - controlled aircraft, other than -
 - (a) a military aircraft; or
 - (b) an aircraft which, not being military aircraft, is exclusively employed in the service of the Government;

"commander", in relation to an aircraft, means the member of the crew designated as commander of that aircraft by the operator thereof, or, failing such a person the person who is for the time being the pilot in command of the aircraft;

"consular officer" means a consular officer of (.....)²; and includes a consul-general, consul, pro-consul and consular agent of (.....)²;

"Convention country" means a country which has been declared by the Minister, by notification published in (.....)⁴ to have ratified or acceded to the Tokyo Convention, and has not been so declared to have denounced the Tokyo Convention;

"military aircraft" means an aircraft of the naval, military or air forces of any country;

"Minister" means (.....)⁵.

"operator", in relation to any aircraft at any time, means the person who at that time has the management of that aircraft;

"pilot in command", in relation to an aircraft, means a person who for the time being is in charge of the piloting of the aircraft without being under the direction of any other pilot in the aircraft;

"Tokyo Convention" means the Convention on Offences and certain other Acts Committed on board Aircraft, signed at Tokyo on 14th September, 1963.

"(.....)²-controlled aircraft" means an aircraft -

(a) which is for the time being registered in (.....)²,
or

(b) which, being for the time being registered in some other country, is for the time being chartered by demise to a person who, or to persons each of whom, satisfies the following requirements, namely:-

(i) that he is a person qualified to be the owner of a legal or beneficial interest in an aircraft registered in (.....)², and

(ii) that he resides or has his principal place of business in (.....)²;

(2) For the purposes of this Act, the period during which an aircraft is in flight shall be deemed to include -

(a) any period from the moment when power is applied for the purpose of the aircraft taking off on a flight

until the moment when the landing run (if any) at the termination of that flight ends; and

(b) for the purposes of section 5 of this Act -

- (i) any further period from the moment when all external doors, if any, of the aircraft are closed following embarkation for a flight until the moment when any such door is opened for disembarkation after that flight; and
- (ii) if the aircraft makes a forced landing, any period thereafter until the time when competent authorities of the country in which the forced landing takes place take over the responsibility for the aircraft and for the persons and property on board the aircraft (being, if the forced landing takes place in (.....)² the time when a police officer arrives at the place of landing),

and any reference in this Act to an aircraft in flight shall include a reference to an aircraft during any period when it is on the surface of the sea or land but not within the territorial limits of any country.

(3) In this Act, unless the context otherwise requires, any reference to a country or the territorial limits thereof shall be construed as including a reference to the territorial waters, if any, of that country.

(4) If the Minister is satisfied that the requirements of Article 18 of the Tokyo Convention have been satisfied (which Article makes provision as to the country which is to be treated as the country of registration of certain aircraft operated by joint air transport organisations or international operating agencies established by two or more Convention countries) the Minister may, by notification

published in (.....)⁴ provide that for the purposes of this Act such aircraft as may be specified in the notification shall be treated as registered in such Convention country as may be so specified.

Application of criminal law to aircraft

3. (1) Any act or omission taking place on board a (.....)² controlled aircraft while in flight elsewhere than in or over (.....)² which, if taking place in (.....)² would constitute an offence under the law in force in (.....)², constitutes that offence:

Provided that this subsection shall not apply to any act or omission which is expressly or impliedly authorised by or under that law when taking place outside (.....)².

(2) No proceedings for any offence under the law in force in (.....)² committed on board an aircraft while in flight elsewhere than in or over (.....)² shall be instituted in (.....)² except by or with the consent of the Attorney-General.⁶

(3) The provisions of subsection (2) of this section shall not prevent the arrest, or the issue of a warrant for the arrest, of any person in respect of any offence, or the remanding in custody or on bail of any person charged with any offence.⁷

(4) For the purpose of conferring jurisdiction, any offence under the law in force in (.....)² committed on board an aircraft in flight shall be deemed to be committed in (.....)².

Provisions as to extradition

4. For the purposes of the application of the (Extradition Act)⁸ to crimes committed on board an aircraft in flight, any aircraft registered in a Convention country shall at any time while that aircraft is in flight be deemed to be within the jurisdiction of that country, whether or not it is for the time being also within the jurisdiction of any other country.

Powers of commander of aircraft

5. (1) The provisions of subsections (2), (3), (4) and (5) of this section shall have effect for the purposes of any proceeding before any court in (.....)².
- (2) If the commander of an aircraft in flight, wherever that aircraft may be, has reasonable grounds to believe in respect of any person on board the aircraft -
- (a) that the person in question has done or is about to do any act on the aircraft while it is in flight which jeopardises or may jeopardise -
- (i) the safety of the aircraft or of persons or property on board the aircraft; or
- (ii) good order and discipline on board the aircraft; or
- (b) that the person in question has done on the aircraft while in flight any act which in the opinion of the commander is a serious offence under any law in force in the country in which the aircraft is registered, not being a law of a political nature or based on racial or religious discrimination,

then, subject to subsection (4) of this section, the commander may take with respect to that person such

reasonable measures, including restraint of his person, as may be necessary -

- (i) to protect the safety of the aircraft or of persons or property on board the aircraft;
- (ii) to maintain good order and discipline on board the aircraft; or
- (iii) to enable the commander to disembark or deliver that person in accordance with subsection (5) of this section,

and for the purposes of paragraph (b) of this subsection any (.....)² controlled aircraft shall be deemed to be registered in (.....)² whether or not it is in fact so registered and whether or not it is in fact registered in some other country.

(3) Any member of the crew of an aircraft and any other person on board the aircraft may, at the request or with the authority of the commander of the aircraft, and any such member shall if so required by that commander, render assistance in restraining any person whom the commander is entitled under subsection (2) of this section to restrain; and at any time when the aircraft is in flight any such member or other person may, without obtaining the authority of the commander, take with respect to any person on board the aircraft any measures such as are mentioned in subsection (2) of this section which he has reasonable grounds to believe are immediately necessary to protect the safety of the aircraft or of persons or property on board the aircraft.

(4) Any restraint imposed on any person on board an aircraft under the powers conferred by this section shall not be continued after the time when the aircraft first thereafter ceases to be in flight unless before or as soon as is

reasonably practicable after that time the commander of the aircraft causes notification of the fact that a person on board the aircraft is under restraint and of the reasons therefor to be sent to an appropriate authority of the country in which the aircraft so ceases to be in flight, but subject to such notification may be continued after that time -

(a) for any period (including the period of any further flight) between that time and the first occasion thereafter on which the commander is able with any requisite consent of the appropriate authorities to disembark or deliver the person under restraint in accordance with subsection (5) of this section; or

(b) If the person under restraint agrees to continue his journey under restraint on board that aircraft.

(5) The commander of an aircraft -

(a) if in the case of any person on board the aircraft he has reasonable grounds -

(i) to believe as mentioned in paragraph (a) of subsection (2) of this section; and

(ii) to believe that it is necessary so to do in order to protect the safety of the aircraft or of persons or property on board the aircraft or to maintain good order and discipline on board the aircraft,

may disembark that person in any country in which that aircraft may be; and

(b) if in the case of any person on board the aircraft he has reasonable grounds to believe as mentioned in paragraph (b) of subsection (2) of this section, may deliver that person -

(i) in (.....)² to a police officer or immigration officer; or

(ii) in any other country which is a Convention country, to an officer having functions corresponding to the functions either of a police officer or of an immigration officer in (.....)².

(6) The commander of an aircraft -

(a) if he disembarks any person in pursuance of paragraph (a) of subsection (5) of this section, in the case of a (.....)²-controlled aircraft, in any country or, in the case of any other aircraft, in (.....)², shall report the fact of, and the reason for, that disembarkation to -

(i) an appropriate authority in the country of disembarkation; and

(ii) the appropriate diplomatic or consular office of the country of nationality of that person;

(b) if he intends to deliver any person in accordance with paragraph (b) of subsection (5) of this section in (.....)² or, in the case of a (.....)²-controlled aircraft, in any other country which is a Convention country, shall before or as soon as reasonably practicable after landing give notification of his intention and of the reasons therefor -

(i) where the country in question is (.....)² to a police officer or immigration officer or, in the case of any other country, to an officer having functions corresponding to the functions either of a police officer or of an immigration officer in (.....)², and

(ii) in either case to the appropriate diplomatic or consular office of the country of nationality of that person,

and any commander of an aircraft who without reasonable cause fails to comply with the requirements of this subsection shall be guilty of an offence⁹ under this Act and shall be liable on conviction to a fine not exceeding (.....)¹⁰.

Regulations

6. The Minister may make such regulations as appear to him to be necessary for carrying out or giving effect to the provisions of the Tokyo Convention.

NOTES

1. This Draft Model Bill is based on the Statute currently in force in the Republic of Singapore.
2. Name of acceding State.
3. Date of commencement or procedure by which the Statute is to be brought into force.
4. Name of official government publication.
5. Title or designation of Minister responsible for Civil Aviation.
6. Or other responsible Law Officer. The purpose of this provision is to prevent prosecutions for infringement of this Statute, without the consent of the Government.
7. The purpose of this subsection is to make provision for the detention or other means of control over a person alleged to have committed an offence under this Statute, pending a Governmental decision as to whether he should be prosecuted in respect of the alleged offence.
8. Or other relevant Statute or law.
9. This provision creates an offence, not required by the Convention, which may be committed by an aircraft commander.
10. Maximum penalty.

Appendix 4: Hague Convention

**CONVENTION
FOR THE SUPPRESSION OF
UNLAWFUL SEIZURE OF AIRCRAFT**

PREAMBLE

THE STATES PARTIES TO THIS CONVENTION

CONSIDERING that unlawful acts of seizure or exercise of control of aircraft in flight jeopardize the safety of persons and property, seriously affect the operation of air services, and undermine the confidence of the peoples of the world in the safety of civil aviation;

CONSIDERING that the occurrence of such acts is a matter of grave concern;

CONSIDERING that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Any person who on board an aircraft in flight:

- (a) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act, or
- (b) is an accomplice of a person who performs or attempts to perform any such act

commits an offence (hereinafter referred to as "the offence").

ARTICLE 2

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

ARTICLE 3

1. For the purposes of this Convention, an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation. In the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board.

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

3. This Convention shall apply only if the place of take-off or the place of actual landing of the aircraft on board which the offence is committed is situated outside the territory of the State of registration of that aircraft; it shall be immaterial whether the aircraft is engaged in an international or domestic flight.

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

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

ARTICLE 4

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offence and any other act of violence against passengers or crew committed by the alleged offender in connection with the offence, in the following cases:

- (a) when the offence is committed on board an aircraft registered in that State;
- (b) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;
- (c) when the offence is committed on board an aircraft leased without crew to a lessee who has his principal place of business or, if the lessee has no such place of business, his permanent residence, in that State.

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

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

ARTICLE 5

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

ARTICLE 6

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

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

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

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

ARTICLE 7

The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

ARTICLE 8

1. The offence shall be deemed to be included as an extraditable offence in any extradition treaty existing between Contracting States. Contracting States undertake to include the offence as an extraditable offence in every extradition treaty to be concluded between them.

2. If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offence. Extradition shall be subject to the other conditions provided by the law of the requested State.

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

4. The offence shall be treated, for the purpose of extradition between Contracting States, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with Article 4, paragraph 1.

ARTICLE 9

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

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

ARTICLE 10

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

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

ARTICLE 11

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

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

ARTICLE 12

1. Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of 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 Depositary Governments.

ARTICLE 13

1. This Convention shall be open for signature at The Hague on 16 December 1970, by States participating in the International Conference on Air Law held at The Hague from 1 to 16 December 1970 (hereinafter

referred to as The Hague Conference). After 31 December 1970, the Convention shall be open to all States for signature in Moscow, London and Washington. Any State which does not sign this Convention before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.

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

3. This Convention shall enter into force thirty days following the date of the deposit of instruments of ratification by ten States signatory to this Convention which participated in The Hague Conference.⁽¹⁾

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

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

6. As soon as this Convention comes into force, it shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations⁽²⁾ and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).⁽³⁾

ARTICLE 14

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

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

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

DONE at The Hague, this sixteenth day of December, one thousand nine hundred and seventy, in three originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish languages.

⁽¹⁾ The Convention entered into force on 14 October 1971.

⁽²⁾ Treaty Series No. 67 (1946), Cmd. 7015.

⁽³⁾ Treaty Series No. 8 (1953), Cmd. 8742.

Appendix 5CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFTSIGNED AT THE HAGUE ON 16 DECEMBER 1970*

<u>States</u>	<u>Date of Signature</u>	<u>Date of Deposit of Instrument of Ratification or Accession</u>
Afghanistan	16 December 1970	
Argentina	16 December 1970	11 September 1972(1)
Australia	15 June 1971	9 November 1972
Austria	28 April 1971	11 February 1974
Bahamas		13 August 1976
Bangladesh		28 June 1978
Barbados	16 December 1970	2 April 1973
Belgium	16 December 1970	24 August 1973
Benin	5 May 1971	13 March 1972
Bolivia		18 July 1979
Botswana		28 December 1978
Brazil	16 December 1970	14 January 1972(2)
Bulgaria	16 December 1970	19 May 1971(2)
Burundi	17 February 1971	
Byelorussian Soviet Socialist Republic	16 December 1970(2)	30 December 1971(2)
Canada	16 December 1970	20 June 1972
Cape Verde		20 October 1977
Chad	27 September 1971	12 July 1972
China		10 September 1980(2)(12)
Chile	4 June 1971	2 February 1972
Colombia	16 December 1970	3 July 1973
Costa Rica	16 December 1970	9 July 1971
Cyprus		5 July 1972
Czechoslovak Socialist Republic	16 December 1970(2)	6 April 1972
Democratic Kampuchea	16 December 1970	
Denmark	16 December 1970	17 October 1972(3)
Dominican Republic	29 June 1971	22 June 1978
Ecuador	19 March 1971(2)	14 June 1971
Egypt, Arab Republic of		28 February 1975(2)
El Salvador	16 December 1970	16 January 1973
Equatorial Guinea	4 June 1971	
Ethiopia	16 December 1970	26 March 1979
Fiji	5 October 1971	27 July 1972
Finland	8 January 1971	15 December 1971
France	16 December 1970	18 September 1972
Gabon	16 December 1970	14 July 1971
Gambia	18 May 1971	28 November 1978
German Democratic Republic	4 January 1971	3 June 1971

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<u>States</u>	<u>Date of Signature</u>	<u>Date of Deposit of Instrument of Ratification or Accession</u>
Germany, Federal Republic of	16 December 1970	11 October 1974
Ghana	16 December 1970	12 December 1973
Greece	16 December 1970	20 September 1973
Grenada		10 August 1978
Guatemala	16 December 1970(2)	16 May 1979
Guinea-Bissau		20 August 1976
Guyana		21 December 1972
Hungary	16 December 1970	13 August 1971(2)
Iceland		29 June 1973
India	14 July 1971	
Indonesia	16 December 1970	27 August 1976(2)
Iran	16 December 1970	25 January 1972
Iraq	22 February 1971	3 December 1971
Ireland		24 November 1975
Israel	16 December 1970	16 August 1971
Italy	16 December 1970	19 February 1974
Ivory Coast		9 January 1973
Jamaica	16 December 1970	
Japan	16 December 1970	19 April 1971
Jordan	9 June 1971	18 November 1971
Kenya		11 January 1977
Kuwait	21 July 1971	25 May 1979(11)
Lao People's Democratic Republic	16 February 1971	
Lebanon		10 August 1973
Lesotho		27 July 1978
Libyan Arab Jamahiriya		4 October 1978(5)
Liechtenstein	24 August 1971	
Luxembourg	16 December 1970	22 November 1978
Malawi		21 December 1972(2)
Malaysia	16 December 1970	
Mali		29 September 1971
Mauritania		1 November 1978
Mexico	16 December 1970	19 July 1972
Mongolia	18 January 1971	8 October 1971
Morocco		24 October 1975(6)
Nepal		19 January 1979
Netherlands, Kingdom of the	16 December 1970	27 August 1973(7)
New Zealand	15 September 1971	12 February 1974

<u>States</u>	<u>Date of Signature</u>	<u>Date of Deposit of Instrument of Ratification or Accession</u>
Nicaragua		6 November 1973
Niger	19 February 1971	15 October 1971
Nigeria		3 July 1973
Norway	9 March 1971	23 August 1971
Oman		2 February 1977
Pakistan	12 August 1971	28 November 1973
Panama	16 December 1970	10 March 1972
Papua New Guinea		15 December 1975(2)
Peru		28 April 1978(2)
Paraguay	30 July 1971	4 February 1972
Philippines	16 December 1970	26 March 1973
Poland	16 December 1970	21 March 1972(2)
Portugal	16 December 1970	27 November 1972
Republic of Korea		18 January 1973(4)
Romania	13 October 1971(2)	10 July 1972(2)
Rwanda	16 December 1970	
Saudi Arabia		14 June 1974(2)(8)
Senegal	10 May 1971	8 February 1978
Seychelles		29 December 1978
Sierra Leone	19 July 1971	13 November 1974
Singapore	8 September 1971	12 April 1978
South Africa	16 December 1970	30 May 1972(2)
Spain	16 March 1971	30 October 1972
Sri Lanka		2 June 1978
Sudan		18 January 1979
Suriname		25 November 1975(9)
Sweden	16 December 1970	7 July 1971
Switzerland	16 December 1970	14 September 1971
Syrian Arab Republic		10 July 1980(2)
Thailand	16 December 1970	16 May 1978
Togo		9 February 1979
Tonga		21 February 1977
Trinidad and Tobago	16 December 1970	31 January 1972
Turkey	16 December 1970	17 April 1973
Uganda		27 March 1972
Ukranian Soviet Socialist Republic	16 December 1970(2)	21 February 1972
Union of Soviet Socialist Republics	16 December 1970(2)	24 September 1971(2)
United Kingdom	16 December 1970	22 December 1971(10)

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<u>States</u>	<u>Date of Signature</u>	<u>Date of Deposit of Instrument of Ratification or Accession</u>
United States of America	16 December 1970	14 September 1971
Uruguay		12 January 1977
Venezuela	16 December 1970	
Viet Nam		17 September 1979(2)
Yugoslavia	16 December 1970	2 October 1972
Zaire, Republic of		6 July 1977

* This Convention entered into force on 14 October 1971.
This list is based on information received from depositary States.

- (1) The instrument of ratification by Argentina contains a declaration which, in translation, reads: "The application of this Convention to territories the sovereignty of which may be disputed among two or more States, whether Parties to the Convention or not, may not be interpreted as alteration, renunciation, or waiver of the position upheld by each up to the present time".
- (2) Reservation made with respect to paragraph 1 of Article 12 of the Convention.
- (3) Until later decision, the Convention will not be applied to the Faroe Islands or to Greenland.

Note: A notification was received by the Government of the United Kingdom from the Government of the Kingdom of Denmark that, with effect from 1 June 1980, Denmark withdraws its reservation, made in the following terms upon ratification, in respect of Greenland:

"Sous la réserve que jusqu'à décision ultérieure la Convention ne s'appliquera pas aux Iles Féroé et au Groënland".

- (4) The accession by the Government of the Republic of Korea to the present Convention does not, in any way, mean or imply the recognition of any territory or regime which has not been recognized by the Government of the Republic of Korea as a State or Government.
- (5) The instrument of accession deposited by the Libyan Arab Jamahiriya contains a disclaimer regarding recognition of Israel.
- (6) "In case of a dispute, all recourse must be made to the International Court of Justice on the basis of the unanimous consent of the parties concerned".
- (7) The Convention cannot enter into force for the Netherlands Antilles until thirty days after the date on which the Government of the Kingdom of the Netherlands shall have notified the depositary Governments that the necessary measures to give effect to the provisions of the Convention have been taken in the Netherlands Antilles.

Note: On 11 June 1974 a declaration was deposited with the Government of the United States of America by the Government of the Kingdom of the Netherlands stating that in the interim the measures required to implement the provisions of the Convention have been taken in the Netherlands Antilles and, consequently, the Convention will enter into force for the Netherlands Antilles on the thirtieth day after the date of deposit of this declaration.

APPENDIX 5

- (8) Approval by Saudi Arabia does not mean and could not be interpreted as recognition of Israel generally or in the context of this Convention.
- (9) Notification of Succession to the Convention was deposited with the Government of the United States of America on 27 October 1978, by virtue of the extension of the Convention to Suriname by the Kingdom of The Netherlands prior to independence. The Republic of Suriname attained independence on 25 November 1975.
- (10) The Convention is ratified "in respect of the United Kingdom of Great Britain and Northern Ireland and Territories under territorial sovereignty of the United Kingdom as well as the British Solomon Islands Protectorate".
- (11) Ratification by Kuwait was accompanied by an Understanding, stating that ratification of the Convention does not mean in any way recognition of Israel by the State of Kuwait. Furthermore, no treaty relations will arise between the State of Kuwait and Israel.
- (12) The Instrument of Accession by the Government of the People's Republic of China contains the following declaration: "The Chinese Government declares illegal and null and void the signature and ratification of the above mentioned Convention by the Taiwan authorities in the name of China".

Appendix 6: Draft Model Bill¹

An Act to make provision with a view to the accession on behalf of (.....)² to the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16th December, 1970, and for purposes connected therewith.

Be it enacted as follows:-

Short title and commencement

1. This Act may be cited as the Hijacking Act, 198_, and shall come into operation on (.....)³.

Interpretation

2. (1) In this Act, unless the context otherwise requires -

"act of violence" means -

(a) any act done in (.....)² which constitutes the offence of (.....)¹⁰; and

(b) any act done outside (.....)², which, if done in (.....)², would constitute such an offence as is mentioned in paragraph (a);

"the Convention" means the Convention for the Suppression of Unlawful Seizure of Aircraft signed at The Hague on 16 December 1970;

"landing" includes alighting on water;

"military service" includes naval and air force service;

"unlawfully" -

(a) in relation to the commission of an act in (.....)², means an offence that is (apart from this Act) constituted under any law in force in (.....)²; and

(b) in relation to the commission of an act outside (.....)², means the Commission of the act that would (apart from this Act) have been an offence under any law in force in (.....)² had it been committed in (.....)².

(2) For the purposes of this Act the period during which an aircraft is in flight shall be deemed to include any period from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation, and, in the case of a forced landing, any period until the competent authorities take over responsibility for the aircraft and for persons and property on board.

Hijacking

3. (1) Subject to subsection (2) a person on board an aircraft in flight who unlawfully, by the use of force or by threats of any kind, seizes the aircraft or exercises control of it commits the offence of hijacking, whatever his nationality or citizenship, whatever the State in which the aircraft is registered and whether the aircraft is in (.....)² or elsewhere.

- (2) If the aircraft is used in military, customs or police service, subsection (1) shall not apply unless -
- (a) the person seizing or exercising control of the aircraft is a citizen of (.....)²; or
 - (b) his act is committed in or over (.....)²; or
 - (c) the aircraft is used in the military, customs or police service of (.....)^{2,4}.
- (3) A person who commits the offence of hijacking shall be guilty of an offence under this Act.

Violence against passengers or crew

4. Any act of violence against the passengers or crew of any aircraft in flight done by any person in connection with the offence of hijacking committed or attempted by him on board such aircraft shall be deemed to have been committed in (.....)² and shall constitute an offence punishable under the law in force in (.....)² applicable thereto, wherever the act of violence was committed, whatever the State of registration of the aircraft and whatever the nationality or citizenship of the offender.

Abetting the commission of acts outside (.....)²

5. Any person in (.....)² who abets the commission elsewhere of any act which would, but for subsection (2) of section 3, be the offence of hijacking shall be guilty of an offence under this Act.⁴

Penalty

6. Any person guilty of an offence under this Act shall be liable on conviction to be punished with (.....)⁵.

Consent for prosecution

7. No prosecution shall be instituted under this Act without the written consent of (.....)⁶.

Extradition

8. (1) There shall be deemed to be included in the list of extradition crimes described in the (Extradition Act)⁷ offences under this Act and attempts to commit such offences.
- (2) Where no extradition treaty is in force between (.....)² and a State which is party to the Convention, a notification (.....)⁸ may be made applying the (Extradition Act)⁷ as if the Convention were an extradition treaty between (.....)² and that State, but where the (Extradition Act)⁷ is so applied, it shall have effect as if the only extradition crimes within the meaning of that Act were offences under this Act and attempts to commit such offences.
- (3) For the purposes of the (Extradition Act)⁷, any act, wherever committed, which -
- (a) is an offence under this Act or an attempt to commit such an offence, or attempt but for subsection (2) of section 3; and
- (b) is an offence against the law of any State in the case of which the (Extradition Act)⁷ has been applied by (.....)⁹,
- shall be deemed to be an offence within the jurisdiction of that State.

NOTES

1. This Draft Model Bill is based on the Statute currently in force in the Republic of Singapore.
2. Name of acceding State.
3. Date of commencement or procedure by which the Statute is to be brought into force.
4. The Hague Convention is intended to apply only to civil aircraft and provides that it shall not apply to aircraft used in military, customs or police services. (Article 3(2).) This provision is, therefore, not required in order to ensure compliance with the Hague Convention. However, similar provisions have been included in enacting legislation in a number of Commonwealth States.
5. Maximum penalty.
6. The Attorney-General or other responsible Law Officer. The purpose of this provision is to prevent prosecutions for infringement of this Statute without the consent of the Government.
7. Or other relevant Statute or law.
8. Specify how notification is to be made e.g. by publication in official government publication.
9. Specify manner of application e.g. by publication in official government publication.
10. List relevant offences in law of acceding State. The Singapore Act includes, inter alia, the following - offences involving firearms; murder; manslaughter; assault occasioning actual bodily harm; battery.

Appendix 7: Montreal Convention

**CONVENTION
FOR THE SUPPRESSION OF UNLAWFUL ACTS
AGAINST THE SAFETY OF CIVIL AVIATION**

THE STATES PARTIES TO THIS CONVENTION

CONSIDERING that unlawful acts against the safety of civil aviation jeopardize the safety of persons and property, seriously affect the operation of air services, and undermine the confidence of the peoples of the world in the safety of civil aviation;

CONSIDERING that the occurrence of such acts is a matter of grave concern;

CONSIDERING that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders;

HAVE AGREED AS FOLLOWS:

ARTICLE I

1. Any person commits an offence if he unlawfully and intentionally:
 - (a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or
 - (b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or
 - (c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or
 - (d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or
 - (e) communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight.
2. Any person also commits an offence if he:
 - (a) attempts to commit any of the offences mentioned in paragraph 1 of this Article; or
 - (b) is an accomplice of a person who commits or attempts to commit any such offence.

ARTICLE 2

For the purposes of this Convention:

- (a) an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation; in

the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board;

- (b) an aircraft is considered to be in service from the beginning of the preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight as defined in paragraph (a) of this Article.

ARTICLE 3

Each Contracting State undertakes to make the offences mentioned in Article 1 punishable by severe penalties.

ARTICLE 4

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

2. In the cases contemplated in subparagraphs (a), (b), (c) and (e) of paragraph 1 of Article 1, this Convention shall apply, irrespective of whether the aircraft is engaged in an international or domestic flight, only if:

- (a) the place of take-off or landing, actual or intended, of the aircraft is situated outside the territory of the State of registration of that aircraft; or
- (b) the offence is committed in the territory of a State other than the State of registration of the aircraft.

3. Notwithstanding paragraph 2 of this Article, in the cases contemplated in subparagraphs (a), (b), (c) and (e) of paragraph 1 of Article 1, this Convention shall also apply if the offender or the alleged offender is found in the territory of a State other than the State of registration of the aircraft.

4. With respect to the States mentioned in Article 9 and in the cases mentioned in subparagraphs (a), (b), (c) and (e) of paragraph 1 of Article 1, this Convention shall not apply if the places referred to in subparagraph (a) of paragraph 2 of this Article are situated within the territory of the same State where that State is one of those referred to in Article 9, unless the offence is committed or the offender or alleged offender is found in the territory of a State other than that State.

5. In the cases contemplated in subparagraph (d) of paragraph 1 of Article 1, this Convention shall apply only if the air navigation facilities are used in international air navigation.

6. The provisions of paragraphs 2, 3, 4 and 5 of this Article shall also apply in the cases contemplated in paragraph 2 of Article 1.

ARTICLE 5

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offences in the following cases:
 - (a) when the offence is committed in the territory of that State;
 - (b) when the offence is committed against or on board an aircraft registered in that State;
 - (c) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;
 - (d) when the offence is committed against or on board an aircraft leased without crew to a lessee who has his principal place of business or, if the lessee has no such place of business, his permanent residence, in that State.
2. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offences mentioned in Article 1, paragraph 1 (a), (b) and (c), and in Article 1, paragraph 2, in so far as that paragraph relates to those offences, in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to any of the States mentioned in paragraph 1 of this Article.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

ARTICLE 6

1. Upon being satisfied that the circumstances so warrant, any Contracting State in the territory of which the offender or the alleged offender is present, shall take him into custody or take other measures to ensure his presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary enquiry into the facts.
3. Any person in custody pursuant to paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.
4. When a State, pursuant to this Article, has taken a person into custody, it shall immediately notify the States mentioned in Article 5, paragraph 1, the State of nationality of the detained person and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

ARTICLE 7

The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory,

to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

ARTICLE 8

1. The offences shall be deemed to be included as extraditable offences in any extradition treaty existing between Contracting States. Contracting States undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

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

4. Each of the offences shall be treated, for the purpose of extradition between Contracting States, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with Article 5, paragraph 1 (b), (c) and (d).

ARTICLE 9

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

ARTICLE 10

1. Contracting States shall, in accordance with international and national law, endeavour to take all practicable measures for the purpose of preventing the offences mentioned in Article 1.

2. When, due to the commission of one of the offences mentioned in Article 1, a flight has been delayed or interrupted, any Contracting State in whose territory the aircraft or passengers or crew are present shall facilitate the continuation of the journey of the passengers and crew as soon as practicable, and shall without delay return the aircraft and its cargo to the persons lawfully entitled to possession.

ARTICLE 11

1. Contracting States shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences. The law of the State requested shall apply in all cases.

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

ARTICLE 12

Any Contracting State having reason to believe that one of the offences mentioned in Article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States which it believes would be the States mentioned in Article 5, paragraph 1.

ARTICLE 13

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

- (a) the circumstances of the offence;
- (b) the action taken pursuant to Article 10, paragraph 2;
- (c) the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.

ARTICLE 14

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 Depositary Governments.

ARTICLE 15

1. This Convention shall be open for signature at Montreal on 23 September 1971, by States participating in the International Conference on Air Law held at Montreal from 8 to 23 September 1971 (hereinafter referred to as the Montreal Conference). After 10 October 1971, the Convention shall be open to all States for signature in Moscow, London and Washington. Any State which does not sign this Convention before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.

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

3. This Convention shall enter into force thirty days following the date of the deposit of instruments of ratification by ten States signatory to this Convention which participated in the Montreal Conference.⁽¹⁾

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

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

6. As soon as this Convention comes into force, it shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations⁽²⁾ and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).⁽³⁾

ARTICLE 16

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

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

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

DONE at Montreal, this twenty-third day of September, one thousand nine hundred and seventy-one, in three originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish languages.⁽⁴⁾

⁽¹⁾ The Convention entered into force on 26 January, 1973.

⁽²⁾ Treaty Series No. 67 (1946), Cmd. 7015.

⁽³⁾ Treaty Series No. 8 (1953), Cmd. 8742.

⁽⁴⁾ Texts in the French, Russian and Spanish languages will be published in the United Nations Treaty Series, available through Agency Section, Her Majesty's Stationery Office, PO Box 569, London SE1 9NY. Tel. 01-928 6977, ext. 410.

Appendix 8CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS
AGAINST THE SAFETY OF CIVIL AVIATIONSIGNED AT MONTREAL ON 23 SEPTEMBER 1971*

<u>States</u>	<u>Date of Signature</u>	<u>Date of Deposit of Instrument of Ratification or Accession</u>
Argentina	23 September 1971	26 November 1973
Australia	12 October 1972	12 July 1973
Austria	13 November 1972	11 February 1974
Bangladesh		28 June 1978
Barbados	23 September 1971	6 August 1976
Belgium	23 September 1971	13 August 1976
Botswana	12 October 1972	28 December 1978
Brazil	23 September 1971(1)	24 July 1972(1)
Bulgaria	23 September 1971(1)	28 March 1973(1)
Burundi	6 March 1972	
Byelorussian Soviet Socialist Rep.	23 September 1971(1)	31 January 1973(1)
Canada	23 September 1971	19 June 1972
Cape Verde		20 October 1977
Chad	23 September 1971	12 July 1972
Chile		28 February 1974
China		10 September 1980(1)(12)
Colombia		4 December 1974
Congo, People's Republic of	23 September 1971	
Costa Rica	23 September 1971	21 September 1973
Cyprus	28 November 1972	15 August 1973
Czechoslovak Socialist Republic	23 September 1971(1)	10 August 1973(1)
Denmark	17 October 1972	17 January 1973(3)
Dominican Republic	31 May 1972	28 November 1973
Ecuador		12 January 1977
Egypt, Arab Republic of	24 November 1972	20 May 1975(1)
El Salvador		25 September 1979
Ethiopia	23 September 1971	26 March 1979(1)
Fiji	21 August 1972	5 March 1973
Finland		13 July 1973
France		30 June 1976(1)
Gabon	24 November 1971	29 June 1976
Gambia		28 November 1978
German Democratic Republic	6 March 1972	9 June 1972
Germany, Federal Republic of	23 September 1971	3 February 1978

*This Convention entered into force on 26 January 1973. This list is based on information received from depositary States.

APPENDIX 8

<u>States</u>	<u>Date of Signature</u>	<u>Date of Deposit of Instrument of Ratification or Accession</u>
Ghana		12 December 1973
Greece	9 February 1972	15 January 1974
Grenada		10 August 1978
Guatemala	9 May 1972	19 October 1978(1)
Guinea-Bissau		20 August 1976
Guyana		21 December 1972
Haiti	6 January 1972	
Hungary	23 September 1971(1)	27 December 1972(1)
Iceland		29 June 1973
India	11 December 1972	
Indonesia		27 August 1976(1)
Iran		10 July 1973
Iraq		10 September 1974
Ireland		12 October 1976
Israel	23 September 1971	30 June 1972
Italy	23 September 1971	19 February 1974
Ivory Coast		9 January 1973
Jamaica	23 September 1971	
Japan		12 June 1974
Jordan	2 May 1972	13 February 1973
Kenya		11 January 1977
Kuwait		27 November 1979(5)
Lao People's Democratic Republic	1 November 1972	
Lebanon		23 December 1977
Lesotho		27 July 1978
Libyan Arab Jamahiriya		19 February 1974
Luxembourg	29 November 1971	
Malawi		21 December 1972(1)
Mali		24 August 1972
Mauritania		1 November 1978
Mexico	25 January 1973	12 September 1974
Mongolia	18 February 1972(1)	14 September 1972(1)
Morocco		24 October 1975(6)
Nepal		19 January 1979
Netherlands, Kingdom of the	23 September 1971	27 August 1973(7)
New Zealand	26 September 1972	12 February 1974
Nicaragua	22 December 1972	6 November 1973
Niger	6 March 1972	1 September 1972
Nigeria		3 July 1973
Norway		1 August 1973

<u>States</u>	<u>Date of Signature</u>	<u>Date of Deposit of Instrument of Ratification or Accession</u>
Oman		2 February 1977(1)(8)
Pakistan		24 January 1974
Panama	18 January 1972	24 April 1972
Papua New Guinea		15 December 1975(1)
Paraguay	23 January 1973	5 March 1974
Peru		28 April 1978(1)
Philippines	23 September 1971	26 March 1973
Poland	23 September 1971(1)	28 January 1975(1)
Portugal	23 September 1971	15 January 1973
Qatar		26 August 1981(13)
Republic of Korea		2 August 1973(4)
Romania	10 July 1972(1)	15 August 1975(1)
Rwanda	26 June 1972	
Saudi Arabia		14 June 1974(1)(9)
Senegal	23 September 1971	3 February 1978
Seychelles		29 December 1978
Sierra Leone		20 September 1979
Singapore	21 November 1972	12 April 1978
South Africa	23 September 1971(1)	30 May 1972(1)
Spain	15 February 1972	30 October 1972
Sri Lanka		2 June 1978
Sudan		18 January 1979
Suriname		25 November 1975(10)
Sweden		10 July 1973
Switzerland	23 September 1971	17 January 1978
Syrian Arab Republic		10 July 1980(1)
Thailand		16 May 1978
Togo		9 February 1979
Tonga		21 February 1977
Trinidad and Tobago	9 February 1972	26 January 1973
Turkey	5 July 1972	23 December 1975
Ukranian Soviet Socialist Republic	23 September 1971(1)	26 January 1973(1)
Union of Soviet Socialist Republics	23 September 1971(1)	19 February 1973(1)
United Republic of Cameroon		11 July 1973(2)
United Kingdom	23 September 1971	25 October 1973(11)
United States	23 September 1971	1 November 1972
Uruguay		12 January 1977
Venezuela	23 September 1971	
Yemen	23 October 1972	
Yugoslavia	23 September 1971	2 October 1972
Zaire, Republic of		6 July 1977

- (1) Reservation made with respect to paragraph 1 of Article 14 of the Convention.
- (2) "In accordance with the provisions of the Convention of 23 September 1971, for the Suppression of Unlawful Acts directed against the Security of Civil Aviation, the Government of the United Republic of Cameroon declares that in view of the fact that it does not have any relations with South Africa and Portugal, it has no obligation towards these two countries with regard to the implementation of the stipulations of the Convention".
- (3) Until later decision the Convention will not be applied to the Faroe Islands or to Greenland.

Note: A notification was received by the Government of the United Kingdom from the Government of the Kingdom of Denmark that, with effect from 1 June 1980, Denmark withdraws its reservation, made in the following terms upon ratification, in respect of Greenland:

"Sous la réserve que jusqu'à décision ultérieure la Convention ne s'appliquera pas aux Iles Féroé et au Groënland".

- (4) The accession by the Government of the Republic of Korea to the present Convention does not in any way mean or imply the recognition of any territory or regime which has not been recognized by the Government of the Republic of Korea as a State or Government.
- (5) It is understood that accession to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation done at Montreal, 1971, does not mean in any way recognition of Israel by the State of Kuwait. Furthermore, no treaty relation will arise between the State of Kuwait and Israel.
- (6) "In case of a dispute, all recourse must be made to the International Court of Justice on the basis of the unanimous consent of the parties concerned".
- (7) The Convention cannot enter into force for the Netherlands Antilles until thirty days after the date on which the Government of the Kingdom of the Netherlands shall have notified the depositary Governments that the necessary measure to give effect to the provisions of the Convention has been taken in the Netherlands Antilles.

Note: On 11 June 1974 a declaration was deposited with the Government of the United States by the Government of the Kingdom of the Netherlands stating that in the interim the measure required to implement the provisions of the Convention has been taken in the Netherlands Antilles and, consequently, the Convention will enter into force for the Netherlands Antilles on the thirtieth day after the date of deposit of this declaration.

- (8) Accession to the said Convention by the Government of the Sultanate of Oman does not mean or imply, and shall not be interpreted as recognition of Israel generally or in the context of this Convention.
- (9) Approval by Saudi Arabia does not mean and could not be interpreted as recognition of Israel generally or in the context of this Convention.
- (10) Notification of Succession to the Convention was deposited with the Government of the United States of America on 27 October 1978, by virtue of the extension of the Convention to Suriname by the Kingdom of the Netherlands prior to independence. The Republic of Suriname attained independence on 25 November 1975.
- (11) The Convention is ratified "in respect of the United Kingdom of Great Britain and Northern Ireland and Territories under territorial sovereignty of the United Kingdom as well as the British Solomon Islands Protectorate".
- (12) The Instrument of Accession by the Government of the People's Republic of China contains the following declaration: "The Chinese Government declares illegal and null and void the signature and ratification of the above mentioned Convention by the Taiwan authorities in the name of China".
- (13) The Instrument of Accession contains a reservation regarding Article 14 of the Convention.

Appendix 9: Draft Model Bill¹

An Act to make provision with a view to the accession on behalf of (.....)² to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23rd September, 1971, and for purposes connected therewith.

Be it enacted as follows:-

Short title and commencement

1. This Act may be cited as the Protection of Aircraft Act, 198_, and shall come into operation on (.....)³.

Interpretation

2. (1) In this Act, unless the context otherwise requires - "act of violence" means -

(a) any act done in (.....)² which constitutes the offence of (.....)⁴; and

(b) any act done outside (.....)² which if done in (.....)², would constitute such an offence as is mentioned in paragraph (a);

"the Convention" means the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23rd September, 1971;

"landing" includes alighting on water;

"military service" includes naval and air force service;

"unlawfully" -

- (a) in relation to the commission of an act in (.....)², means an offence that is (apart from this Act) constituted under any law in force in (.....)², and

- (b) in relation to the commission of an act outside (.....)², means the commission of the act that would (apart from this Act) have been an offence under any law in force in (.....)² had it been committed in (.....)².
- (2) For the purposes of this Act -
 - (a) the period during which an aircraft is in flight shall be deemed to include any period from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation, and, in the case of a forced landing, any period until the competent authorities take over responsibility for the aircraft and for persons and property on board; and
 - (b) an aircraft shall be taken to be in service during the whole of the period which begins with the pre-flight preparation of the aircraft for a flight and ends twenty-four hours after the aircraft lands having completed that flight, and also at any time (not falling within that period) while, in accordance with paragraph (a) the aircraft is in flight.

Destroying, damaging or endangering safety of aircraft

- 3. (1) Subject to subsection (4), any person who unlawfully and intentionally -
 - (a) destroys an aircraft in service or so damages such aircraft as to render it incapable of flight or as to be likely to endanger its safety in flight; or

- (b) commits on board an aircraft in flight any act of violence which is likely to endanger the safety of the aircraft,
- shall be guilty of an offence under this Act.
- (2) Subject to subsection (4), any person who unlawfully and intentionally places or caused to be placed on an aircraft in service any device or substance which is likely to destroy the aircraft or is likely so to damage it as to render it incapable of flight or as to be likely to endanger its safety in flight shall be guilty of an offence under this Act; but nothing in this subsection shall be construed as limiting the circumstances in which the commission of any act -
- (a) may constitute an offence under subsection (1); or
- (b) may constitute attempting or conspiring to commit or abetting the commission of such offence.
- (3) Except as provided by subsection (4), subsections (1) and (2) apply whether any such act therein mentioned is committed in (.....)² or elsewhere, whatever the nationality or citizenship of the person committing the act or whatever the State in which the aircraft is registered.
- (4) Subsections (1) and (2) do not apply to any act committed in relation to an aircraft used in military, customs or police service unless -
- (a) the act is committed in or over (.....)²; or
- (b) where the act is committed outside (.....)², the person committing the act is a citizen of (.....)^{2,5}.

Other acts endangering or likely to endanger
the safety of aircraft

4. (1) Subject to subsections (5) and (6), any person who unlawfully and intentionally destroys or damages any property to which this section applies or interferes with the operation of such property, where the destruction, damage or interference is likely to endanger the safety of aircraft in flight, shall be guilty of an offence under this Act.
- (2) Subsection (1) applies to any property used for the provision of air navigation facilities including any land, building or ship so used, and including any apparatus or equipment so used, whether it is on board an aircraft or elsewhere.
- (3) Subject to subsections (4) and (5), any person who intentionally communicates any information which is false, misleading or deceptive in a material particular, where the communication of the information endangers the safety of an aircraft in flight or is likely to endanger the safety of an aircraft in flight, shall be guilty of an offence under this Act.
- (4) It shall be a defence for a person charged with an offence under subsection (3) to prove -
 - (a) that he believed, and had reasonable grounds for believing, that the information was true; or
 - (b) that, when he communicated the information, he was lawfully employed to perform duties which consisted of or included the communication of information and that he communicated the information in good faith in the performance of those duties.

- (5) Subsections (1) and (3) do not apply to the commission of any act unless either the act is committed in (.....)², or, where the act is committed outside (.....)² -
- (a) the person committing the act is a citizen of (.....)²; or
- (b) the commission of the act endangers or is likely to endanger the safety in flight of a civil aircraft registered in (.....)² or chartered by demise to a lessee whose principal place of business, or (if he has no place of business) whose permanent residence is in (.....)²; or
- (c) the act is committed on board a civil aircraft which is registered or so chartered; or
- (d) the act is committed on board a civil aircraft which lands in (.....)² with the person who committed the act still on board.
- (6) Subsection (1) also does not apply to any act committed outside (.....)² and so committed in relation to property which is situated outside (.....)² and is not used for the provision of air navigation facilities in connection with international air navigation, unless the person committing the act is a citizen of (.....)².
- (7) In this section, "civil aircraft" means any aircraft other than an aircraft used in military, customs or police service.

Abetting the commission of acts outside (.....)²

5. Any person in (.....)² who abets the commission elsewhere of any act which -

(a) would, but for subsection (4) of section 3, be an offence under that section; or

(b) would, but for subsection (5) or (6) of section 4, be an offence under that section,

shall be guilty of an offence under this Act.

Penalty

6. Any person guilty of an offence under this Act shall be liable on conviction to be punished with (.....)⁶.

Consent for prosecution

7. No prosecution shall be instituted under this Act without the written consent of (.....)⁷.

Extradition

8. (1) There shall be deemed to be included in the list of extradition crimes described in the (.....)⁸ offences under this Act and attempts to commit such offences.

(2) Where no extradition treaty is in force between (.....)² and a State which is party to the Convention, a notification (.....)⁹ may be made applying the (.....)⁸ as if the Convention were an extradition treaty between (.....)² and that State; but where the (.....)⁸ is so applied, it shall have effect as

if the only extradition crimes within the meaning of that Act were offences under this Act and attempts to commit such offences.

- (3) For the purposes of the (.....)⁸ any act, wherever committed, which -
- (a) is an offence under this Act or an attempt to commit such an offence, or attempt but for subsection (4) of section 3, or subsection (5) or (6) of section 4; and
- (b) is an offence against the law of any State in the case of which the (.....)⁸ has been applied by (.....)¹⁰,

shall be deemed to be an offence within the jurisdiction of that State.

NOTES

1. This Draft Model Bill is based on the Statute currently in force in the Republic of Singapore.
2. Name of acceding State.
3. Date of commencement or procedure by which the Statute is to be brought into force.
4. List relevant offences in law of acceding State.
5. The Montreal Convention is intended to apply only to civil aircraft and provides that it shall not apply to aircraft used in military, customs or police services. (Article 4(1).) This provision is, therefore, not required in order to ensure compliance with the Montreal Convention. However, similar provisions have been included in enacting legislation in a number of Commonwealth States.
6. Maximum penalty.
7. The Attorney General or other responsible Law Officer.
The purpose of this provision is to prevent prosecutions for infringements of this Statute without the consent of the Government.
8. Extradition Act or other relevant Statute or law.
9. Specify how notification is to be made e.g. by publication in official government publication.
10. Specify manner of application e.g. by publication in official government publication.

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