

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