



International  
Civil Aviation  
Organization

Organisation  
de l'aviation civile  
internationale

Organización  
de Aviación Civil  
Internacional

Международная  
организация  
гражданской  
авиации

منظمة الطيران  
المدني الدولي

国际民用  
航空组织

Tel.: +1 (514) 954-8036

Ref.: LM 1/16.1-10/10

5 February 2010

**Subject:** Diplomatic Conference (Beijing, China, 30 August to 10 September 2010) to adopt:  
1) the Protocol to Amend the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* (the Montreal Convention of 1971) as amended by the Protocol of 1988; and  
2) the Protocol to Amend the *Convention for the Suppression of Unlawful Seizure of Aircraft* (The Hague Convention of 1970)

**Action required:** a) to indicate participation; and if so, the composition of your delegation; and b) to submit comments, proposals or papers no later than 7 June 2010

Sir/Madam,

I have the honour to inform you that at the sixth meeting of its 188th Session on 30 October 2009, the Council considered the report of the 34th Session of the Legal Committee and agreed in principle to convene a Diplomatic Conference to finalize and adopt the above-mentioned two draft instruments recommended by the Legal Committee. It was subsequently decided that the Conference will be held in Beijing, China, from 30 August to 10 September 2010.

The Council decided to invite to participate in the Diplomatic Conference all Contracting States; all non-Contracting States, with voting rights; observers that had been invited to participate in the 34th Session of the Legal Committee; the regional civil aviation commissions as observers; and Palestine as observer.

I am transmitting herewith the Provisional Agenda of the Conference (DCAS Doc No. 1) and the Provisional Rules of Procedure of the Conference (DCAS Doc No. 2). Matters relating to **credentials and full powers** are contained in **Attachment A**. Information relating to documentation, registration and other arrangements may be found in **Attachment B**. The extract of the Summary Minutes of the Council (C-Min 188/6) is reproduced in **Attachment C**.

I would be grateful to receive your comments, if any, on the two draft consolidated texts (DCAS Doc Nos. 3 and 4) as well as any other comments, proposals or papers **no later than 7 June 2010**.

I should also appreciate if you would advise me as early as possible whether your government/organization intends to participate in the Conference and, if so, the composition of the delegation.

Accept, Sir/Madam, the assurances of my highest consideration.



Raymond Benjamin  
Secretary General

**Enclosures:**

- Attachment A — Credentials and Full Powers
- Attachment B — Documentation, registration and other arrangements
- Attachment C — Extract of the Summary Minutes of the Council (C-Min 188/6)
- DCAS Doc No. 1 — Provisional Agenda of the Conference
- DCAS Doc No. 2 — Provisional Rules of Procedure of the Conference
- DCAS Doc No. 3 — Draft consolidated text of the Montreal Convention of 1971 as amended by the Airports Protocol of 1988 with amendments proposed by the Legal Committee
- DCAS Doc No. 4 — Draft consolidated text of The Hague Convention of 1970 with amendments proposed by the Legal Committee

**ATTACHMENT A** to State letter LM 1/16.1-10/10

**CREDENTIALS AND FULL POWERS**

It is envisaged that the Conference will establish a Credentials Committee. In accordance with Rule 2 of the Provisional Rules of Procedure (DCAS Doc No. 2) and established international practice, **Credentials** are to be issued either by the Head of State or Government or by the Minister for Foreign Affairs. Furthermore, Delegations wishing to sign the instrument or instruments to be adopted by the Conference should present **Full Powers** to do so signed by the Head of State or Government or by the Minister for Foreign Affairs. Credentials and Full Powers may be combined in one instrument, but credentials alone do not suffice for the purpose of signing the instrument or instruments adopted by the Conference. To facilitate the preparation of the letter of credentials and full powers, a sample letter is available hereunder. Only originals of these documents will be accepted; facsimile copies or scanned electronic copies are not acceptable. Credentials for international organizations are to be issued by the head of the organization concerned.

(Sample)

**LETTER OF CREDENTIALS AND FULL POWERS**

I have the honour to inform the Secretary General of the International Civil Aviation Organization that the following officials have been duly accredited to represent (Name of State) at the Diplomatic Conference to be held in Beijing from 30 August to 10 September 2010, to adopt:

- 1) the Protocol to Amend the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* (the Montreal Convention of 1971) as amended by the Protocol of 1988; and
- 2) the Protocol to Amend the *Convention for the Suppression of Unlawful Seizure of Aircraft* (The Hague Convention of 1970).

(Names of officials and an indication of their respective capacities as Chief Delegate, Alternate Chief Delegate, Delegate, Alternate or Adviser)

I further authorize \_\_\_\_\_ (Names of the officials so authorized), having full powers, to sign on behalf of the Government of \_\_\_\_\_ (Name of State), the international legal instrument or instruments which the Conference may adopt.

Done in \_\_\_\_\_ (Place of signature) this \_\_\_\_\_ (Day and month) 2010.

(Signed by:  
Head of State,  
Head \_\_\_\_\_ of  
Government, or  
Minister of Foreign  
Affairs)

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**ATTACHMENT B** to State letter LM 1/16.1-10/10

**DOCUMENTATION, REGISTRATION AND OTHER ARRANGEMENTS**

*Documentation*

The basic documents for the Conference will be the following texts:

- 1) draft consolidated text of the Montreal Convention of 1971 as amended by the Airports Protocol of 1988 with amendments proposed by the Legal Committee (DCAS Doc No. 3); and
- 2) draft consolidated text of The Hague Convention of 1970 with amendments proposed by the Legal Committee (DCAS Doc No. 4).

Working Papers and other documentation and information relating to the Conference will be posted as available on the ICAO Website at <http://www.icao.int/DCAS2010/> or [www.icao.int](http://www.icao.int) under “Meetings”.

The Report of the 34th Session the Legal Committee (Doc 9926-LC/194) is available on the ICAO-NET ([www.icao.int/icaonet](http://www.icao.int/icaonet)) under Electronic Publications/ICAO Documents. Non-Contracting States and observers without access to the ICAO-NET will be provided with copies via electronic mail.

Documents to be submitted by States should be forwarded electronically, in Microsoft Word format, to ICAO Headquarters, Montréal ([icaohq@icao.int](mailto:icaohq@icao.int), with a copy to [LEB@icao.int](mailto:LEB@icao.int)); **documentation received after 7 June 2010 will not be translated and will be issued in its original language of submission only.**

*Registration and other arrangements*

All participants, including observers, are required to register upon arrival at the Conference; the registration desk will be open one day before the opening of the Conference from 1500 to 1900 hours and daily thereafter from 0800 to 1700 hours until the end of the Conference. At registration, every participant/observer will be issued an identification badge, which will be required to access the Conference. The specific address of the Conference centre will be announced in due course.

In an effort to streamline the registration process, participants can pre-register for the Diplomatic Conference on line at <https://events.icao.int/>, subject to subsequent presentation of their credentials and full powers. Participants should pre-register on-line, print out their confirmation page and bring it with them, together with the original credentials and full powers, to the registration desk at the Conference, where they will receive photo-ID badges.

The first meeting will be opened at 0930 hours on the first day of the Conference.

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ATTACHMENT C to State letter LM 1/16.1-10/10



International Civil Aviation Organization

C-MIN 188/6  
19/11/09  
**Extract**

**COUNCIL — 188TH SESSION**

**SUMMARY MINUTES OF THE SIXTH MEETING**

**(THE COUNCIL CHAMBER, FRIDAY, 30 OCTOBER 2009, AT 1000 HOURS)**

**OPEN MEETING**

President of the Council: Mr. Roberto Kobeh González

Secretary: Mr. Denys Wibaux, Acting Secretary General

**PRESENT:**

Argentina	— Mr. A.M. Singh	Namibia	— Mr. B.T. Mujetenga
Australia	— Mr. P.K. Evans	Nigeria	— Dr. O.B. Aliu
Brazil	— Mr. R.S. Magno	Republic of Korea	— Mr. Kim, C.-H.
Canada	— Mr. P. Langlais (Alt.)	Romania	— Mr. C. Cotrut
China	— Mr. Tao Ma	Russian Federation	— Mr. A.A. Novgorodov
Dominican Republic	— Mr. C.A. Veras	Saudi Arabia	— Mr. T.M.B. Kabli
Ecuador	— Mr. I. Arellano Lascano	Singapore	— Mr. K.P. Bong
Egypt	— Mr. M.T. Elzanaty	South Africa	— Mr. T. Peege
El Salvador	— Mr. J.A. Aparicio Borjas	Spain	— Mr. V.M. Aguado
France	— Mr. M. Wachenheim	Switzerland	— Mr. D. Ruhier
Germany	— Mr. J. Mendel	Tunisia	— Mr. I. Sassi
Ghana	— Mr. S. Allotey	Uganda	— Mr. J. Twijuke
Iceland	— Mr. F. Christensen (Alt.)	United Arab Emirates	— Miss A. AL Hamili
India	— Mr. A. Mishra	United Kingdom	— Mr. M. Rossell
Italy	— Mr. G. Picheca	United States	— Ms. M. Kehoe (Alt.)
Japan	— Mr. S. Baba	Uruguay	— Mr. J.L. Vilardo
Malaysia	— Mr. S.-C. Kok	Venezuela	— Mr. D. Blanco Carrero
Mexico	— Mr. D. Méndez Mayora		

**ALSO PRESENT:**

Mr. Chunyu Ding (Alt.)	— China
Mr. E.N. Méndez (Alt.)	— Dominican Republic
Mrs. D. Jiménez Hernández (Alt.)	— Mexico
Mr. Seo, W.-S. (Alt.)	— Republic of Korea
Mr. Yoo, H.-J. (Alt.)	— Republic of Korea

**SECRETARIAT:**

Mr. D. Wibaux	— D/LEB
Mr. S.A.A. Espinola	— DD/LEB
Mr. J. Augustin	— SLO
Mr. B. Verhaegen	— LO/LEB
Dr. J. Huang	— LO/LEB
Miss S. Black	— Précis-writer

\*Part-time

(...)

- Subject No. 12.5: Plans for legal meetings**  
**Subject No. 16: Legal work of the Organization**  
**Subject No. 16.1: Reports from the Legal Committee**  
**Subject No. 16.3: International air law conventions**

**Report of the 34th Session of the Legal Committee and  
 General Work Programme of the Legal Committee**

1. The Council had for consideration C-WP/13414, in which the Secretary General reported on the outcome of the 34th Session of the Legal Committee (Montréal, 9 to 17 September 2009). The main item had been the consideration of the two draft texts prepared by the Special Sub-Committee of the Legal Committee on the Preparation of One or More Instruments Addressing New and Emerging Threats. The Legal Committee had also considered Rule 31 of its Rules of Procedure relating to observers, as requested previously by the Council (187/5), and the issue of unruly/disruptive passengers. The two draft consolidated texts of The Hague and Montréal Conventions with the amendments proposed by the Legal Committee were set forth in Appendices B and A, respectively, to the paper. The paper also set forth a proposal to convene a Diplomatic Conference to finalize and adopt the draft texts to amend The Hague and Montréal Conventions from 3 to 14 May 2010 at ICAO Headquarters in Montréal, unless an invitation were received from a Contracting State to host the Diplomatic Conference.

2. In expressing appreciation for the good work done during the Legal Committee, the Representative of Romania affirmed that the outcome was quite satisfactory as the latter had managed to narrow down the controversies and the draft texts contained fewer square brackets than earlier texts that had not been sufficiently mature for submission to a Diplomatic Conference. It was for that reason that he was ready to approve the action proposed in the Executive Summary of the paper. Underscoring that there was nonetheless much work to do before the Diplomatic Conference, the Representative of Romania indicated that it was necessary to further consider the issues relating to the unlawful transportation of certain dangerous materials and the exclusion of military activities from the scope of the Conventions. Noting that there were also technical aspects to consider relating to the number and form of the draft instruments to amend The Hague and Montréal Conventions, he recalled that there had been a general feeling during the Legal Committee that the instruments should take the form of protocols or conventions. Those aspects needed to be clarified before the Diplomatic Conference so that the workload during that meeting would be less. He emphasized the need to clarify the key outstanding issues of the two draft texts so that the outcome of the Diplomatic Conference would be the widespread signature of the instrument or instruments.

3. The Representative of Canada also congratulated the Legal Committee on its excellent work. Observing that the said military exclusion clause had been a contentious and divisive issue at the Legal Committee meeting in September and that it remained unresolved, and noting the lack of progress on this issue by the United Nations (UN) in New York with the draft Comprehensive Convention on International Terrorism, he emphasized his State's concern that the time might not be ripe to proceed to a Diplomatic Conference. The Representative of Canada indicated that his State welcomed the stance of the Legal Committee on the non-amendment of Rule 31 of its Rule of Procedure relating to the role and powers of observers. While Canada also favoured the reactivation of the Secretariat Study Group on Unruly Passengers, it was not fully understood why the latter could not commence its work prior to the convening of the Diplomatic Conference given that the issue was, in Canada's view, an important and urgent one.

4. In likewise thanking the Legal Committee for its excellent work, the Representative of Spain indicated that he supported, in principle, the action proposed in the Executive Summary of the

paper. In also supporting, in principle, the comments made regarding the said outstanding issues of the unlawful transportation of certain dangerous materials and the military exclusion clause, he sought further information on those two issues and the risks they posed to a successful conclusion of the Diplomatic Conference.

5. While appreciating the efforts made by the Secretariat to ensure the success of the 34th Session of the Legal Committee, the Representative of Japan averred that C-WP/13414 did not correctly reflect the meeting's outcome and underscored that it was therefore unacceptable to his State. He recalled that, during the meeting, Japan had accepted LC/34-WP/5-3 (Draft Report containing the texts proposed by the Legal Committee to amend The Hague and Montréal Conventions) and had understood that it had been adopted by the Legal Committee. On that understanding, Japan requested that the language used in that paper be reflected precisely in C-WP/13414. As an example, the Representative of Japan cited Article 4 *ter* of the draft text to amend the Montréal Convention set forth in Attachment D to LC/34-WP/5-3. In emphasizing that that clause should also appear in Appendix A to C-WP/13414, he underscored that it was a key point for Japan. Noting that his State had found some other incorrect reflections in the Appendices to C-WP/13414, the Representative of Japan underscored that unless LC/34-WP/5-3 were correctly reflected, his State could not accept C-WP/13414. He endorsed the comments made by the Representative of Canada regarding the military exclusion clause, as well as the reactivation of the Secretariat Study Group on Unruly Passengers.

6. While supporting, in principle, the action proposed in the Executive Summary of C-WP/13414, the Representative of China indicated that his State intended to host the Diplomatic Conference. Noting that, from 1 May to 31 October 2010 Shanghai would be hosting World Expo 2010, which would be attended by more than one hundred countries, he affirmed that Shanghai was one of the best possible venues for such a Diplomatic Conference. China would welcome all delegates to Shanghai to attend the Diplomatic Conference and to participate in World Expo 2010. The specific dates for the Diplomatic Conference could be decided upon in consultation with the Secretariat.

7. In thanking China for its offer to host the Diplomatic Conference in Shanghai on dates to be discussed later, the Director of the Legal Bureau (D/LEB) indicated that it would pose no problems from the Secretariat's point of view. He expressed confidence that in the event that the Council accepted that offer, it would demonstrate flexibility regarding the dates of the Diplomatic Conference.

8. In then responding to the various points raised, D/LEB agreed that the military exclusion clause was one issue on which work remained to be done during the Diplomatic Conference. Noting that it was political in nature, he underscored that it was customary, in the elaboration of an ICAO international air law instrument, for political issues to be resolved during the Diplomatic Conference convened for its adoption. With regard to the more technical issue of the number and form of the instruments, D/LEB indicated that there had not been any clear recommendation thereon by the Legal Committee. The latter, based on the Secretariat's recommendation, had preferred to work on the basis of the draft consolidated texts to amend The Hague and Montréal Conventions. The Legal Committee had discussed whether there was a need to adopt new conventions, namely, the consolidated texts, or whether it would be better to adopt Protocols of Amendments to The Hague and Montréal Conventions, which would be simpler, particularly from the States' point of view. As no decision had been taken, work was continuing on the basis of the draft consolidated texts set forth in Appendices A and B to C-WP/13414. If the Council so agreed, those draft consolidated texts would be attached to the State letter notifying the convening of the Diplomatic Conference. It was nonetheless his understanding that, for strictly legal purposes, States would be called upon to sign not the consolidated texts but Protocols of Amendments to The Hague and Montréal Conventions. To avoid any ambiguity and to facilitate matters, the Diplomatic Conference could adopt the consolidated texts as Appendices to the Final Act.

9. With regard to the issue of unruly passengers, D/LEB emphasized that the Secretariat was ready to commence work thereon, taking into account the priority accorded by the Council and the availability of resources.

10. With reference to the military exclusion clause, D/LEB noted that some Delegations attending the Legal Committee meeting had considered that all counter-terrorism conventions adopted under the auspices of the UN or other international organizations included such a clause in order to clarify explicitly that military activities were not within the scope of application of those penal law conventions. They were of the view that, as a military exclusion clause was not contained in The Hague Convention of 1970 and the Montréal Convention of 1971, it was important to include such a clause in the draft texts to amend those Conventions to explicitly state that their scope of application was limited and that there were other legal régimes which applied to military activities. In particular, in time of war, military activities were covered by international public law, namely, the UN Charter, which addressed, *inter alia*, the issues of the prohibition of force and a State's right to self-defense, and international humanitarian law, which addressed, *inter alia*, the issues of *jus ad bellum* (when it is right to resort to armed force) and *jus in bello* (what is acceptable in using such force), *etc.* Although it was a question of clarifying the scope of application of The Hague and Montréal Conventions, some Delegations had difficulty with the introduction of a military exclusion clause.

11. D/LEB indicated that, while in his view the issue of the unlawful transportation of certain dangerous materials and fugitives would be the most difficult one to resolve, he considered that major progress thereon had been made in the Legal Committee. The Plenary had been able to rally around a compromise proposed by the small informal Group on the Transport Offences established at the request of the Chairman of the Legal Committee and headed by the Delegate of France, Mr. T. Olson. While he did not wish to prejudge the outcome of the Diplomatic Conference, D/LEB considered that the said compromise could serve as a good basis for future work.

12. With regard to the point raised by the Representative of Japan, D/LEB noted that paragraph 2.163 of the Report of the Legal Committee (Doc 9926) referred to "the above decision of the Committee on the proposal of the Group on the Transport Offices for deletion of Article 4 *ter*". Observing that Article 4 *ter* was closely linked to introducing an offence for the transport of certain dangerous materials, he underscored that nothing had yet been finalized and that it would be the subject of further work at the Diplomatic Conference.

13. While noting the explanation provided by D/LEB, the Representative of Japan indicated that he could not change his position. It was his State's understanding that Article 4 *ter* had been retained in the draft text to amend the Montréal Convention. He reiterated that unless LC/34-WP/5-3 were correctly reflected in C-WP/13414, Japan could not accept that paper. The Representative of Japan wished to place on record his State's objection.

14. The President of the Council clarified that the Council could not change either C-WP/13414 presented by the Secretary General or the draft texts to amend The Hague and Montréal Conventions proposed by the Legal Committee. However, if the Council agreed to the action set forth in the Executive Summary of the paper, then the said draft texts would be circulated to States and relevant international organizations for comment. Any comments received would be documented by the Secretariat for consideration by the Diplomatic Conference, which would take the final decision regarding the draft texts.

15. The Representative of Singapore thanked the Legal Committee for its work on the draft texts to amend The Hague and Montréal Conventions and the Secretariat, in particular, LEB, for its report. He noted that his State shared the unanimous view of all of the Delegates who had taken the floor at the end of the Legal Committee meeting that the said draft texts were sufficiently mature for



submission to the Diplomatic Conference. The Representative of Singapore also thanked China for offering to host the Diplomatic Conference in Shanghai. In then referring to paragraph e) of the Executive Summary of the paper, he indicated that his State agreed with the Legal Committee that Rule 31 of its Rules of Procedure did not need to be amended. With regard to paragraph f), the Representative of Singapore indicated that his State recognized that, with the growth projections of global air traffic, the number of unruly passenger incidents could be expected to grow and that effective measures to stem that growth needed to be developed. Singapore therefore supported the reactivation of the Secretariat Study Group on Unruly Passengers.

16. The Representative of Brazil, recalling that his State had actively participated in the work of the Legal Committee, emphasized that it was prepared to continue to be involved in the negotiations on the final texts of the instruments. In thanking China for offering to host the Diplomatic Conference, he underscored the need to be more specific regarding the Council's acceptance of that invitation and the dates of the meeting in the Council's decision.

17. The Representative of the United States noted that her State supported, in general, the convening of a Diplomatic Conference. It considered that there was much value in updating The Hague and Montréal Conventions and was prepared to support the action proposed in the Executive Summary of the paper. However, as indicated by the Representatives of Romania and Spain, considerable work remained to be done on some of the outstanding issues. For that reason, the United States considered that it would be useful to convene the Diplomatic Conference at a date later than the one proposed in the paper, 3 to 14 May 2010. It believed that having additional time in which to consult on many of the outstanding issues would be beneficial and could, in the end, result in a more productive Diplomatic Conference. The Representative of the United States joined previous speakers in thanking China for its offer to host the Diplomatic Conference in Shanghai.

18. The Representative of Nigeria congratulated the Secretariat for the excellent work which it had done to support the Legal Committee. He endorsed the comment made by the Representative of Canada regarding the Secretariat Study Group on Unruly Passengers beginning its work before the Diplomatic Conference. The Representative of Nigeria also supported the comment made by the Representative of Romania on the need to clarify the number of instruments to be adopted by the Diplomatic Conference. With respect to the military exclusion clause contained in paragraph 2 of Article 3 *bis* of the draft text to amend The Hague Convention and paragraph 2 of Article 4 *bis* of the draft text to amend the Montréal Convention, he emphasized the need to clarify the distinction to be made between "armed forces" and "military forces" referred to therein so as to remove any ambiguity in the interpretation of that clause prior to the Diplomatic Conference. In expressing appreciation for China's offer to host the Diplomatic Conference, the Representative of Nigeria emphasized that it should be accepted by the Council.

19. The Representative of the Russian Federation thanked LEB for its excellent report on the results of the 34th Session of the Legal Committee. Noting, from paragraph 2.1.2 of the paper, that there were some issues which required further consideration, he indicated that he shared the concerns expressed by the Representatives of Canada and Spain. The Representative of the Russian Federation underscored that, in his State's view, biological, chemical and nuclear weapons should not be used pursuant to UN Security Council Resolution 1540 (2004). In also sharing the concerns expressed with regard to the timing of the Diplomatic Conference, he emphasized that additional work should be done beforehand to resolve the outstanding issues. The Representative of the Russian Federation concurred with the Representative of Romania on the need to clarify such issues so that the instruments would be signed by as many States as possible. Recalling that that had unfortunately not been the case during the recent Diplomatic Conference on Compensation for Damage (Montréal, 20 April to 2 May 2009), he expressed the hope that experience would not be repeated.

20. In congratulating the Secretariat on the paper, the Representative of Venezuela indicated that he agreed, in general, with the action proposed in the Executive Summary. With regard to paragraph c), while thanking China for its offer to host the Diplomatic Conference, he stressed the need to establish the dates of the latter as soon as possible so that the envisaged State letter could be issued. In sharing the concern expressed by the Representative of the Russian Federation regarding the low number of signatures of the two Conventions adopted at the recent Diplomatic Conference on Compensation for Damage, the Representative of Venezuela enquired as what action the Secretariat would take to ensure a higher level of participation in the Diplomatic Conference and more widespread signature of the instruments.

21. The Representative of Saudi Arabia shared the concerns expressed by previous speakers. While voicing appreciation for the excellent paper, he stressed the need to align the Arabic version of the draft texts to amend The Hague and Montréal Conventions with the other language versions to avoid any misinterpretations. The President of the Council indicated that the Arabic texts would be reviewed and aligned with the other texts, as necessary.

22. The Representative of Ecuador congratulated the Legal Committee on its excellent work and voiced support for the paper. In sharing the concerns expressed by the Representative of Romania, he requested that additional clarification be provided. The Representative of Ecuador also endorsed the comments made by the Representatives of Singapore, Brazil and Nigeria. In thanking China for its offer to host the Diplomatic Conference, he wished the latter a successful outcome.

23. The Representative of France endorsed the action proposed in the Executive Summary of the paper. While recognizing that there was much work that remained to be done on the outstanding issues, he stressed that that not all differences and difficulties would be resolved before the Diplomatic Conference. In also expressing appreciation to China for its offer, the Representative of France voiced support for convening the Diplomatic Conference in Shanghai.

24. In sharing the views expressed by the Representative of France, the Representative of Argentina emphasized that as the outstanding issues were political in nature, they would have to be addressed by the Diplomatic Conference.

25. The Representative of Italy supported the action proposed in the Executive Summary of the paper, as well as the offer by China to host the Diplomatic Conference. In then referring to some of the issues remaining to be resolved, he recalled that there had been strong opposition on the part of industries and some States to the draft provisions relating to the unlawful transportation of certain dangerous materials. The Representative of Italy considered that it was advisable that a compromise be achieved on the basis of the solution suggested by the Group on the Transport Offences. With regard to the exclusion of military activities from the scope of the Conventions, he affirmed that the compromise proposed by Switzerland was a good meeting point of all of the different positions. With reference to the issue of unruly passengers, the Representative of Italy averred that it would be difficult to solve with international regulation. He considered that the model national legislation developed earlier by the Secretariat Study Group on Unruly Passengers and embodied in Appendix E of Assembly Resolution A36-26 (*Consolidated statement of continuing ICAO policies in the legal field*) was a positive approach.

26. In endorsing the action proposed in the Executive Summary of the paper, the Representative of Mexico emphasized that the draft texts to amend The Hague and Montréal Conventions were sufficiently mature to be presented to the Diplomatic Conference. Noting that the Legal Committee had considered that it had reached the point where the outstanding issues would have to be addressed by the latter, he underscored that the military exclusion clause required a political decision at the level of the Diplomatic Conference. The Representative of Mexico averred that it would not be useful to change the proposed dates for the meeting, 3 to 14 May 2010, in order to carry out further work on such outstanding

issues. In thanking China for its offer to host the Diplomatic Conference, he requested the Secretariat to ensure that the financial implications for ICAO would be the same as those indicated in the Executive Summary of the paper, namely, that no additional ICAO resources were required. In applauding the reactivation of the Secretariat Study Group on Unruly Passengers, the Representative of Mexico underscored that the latter should consider the issue of unruly passengers in a holistic way and address the problem of responsibility and measures that air carriers should take to avoid and deal with disruptive passenger behaviour.

27. The Representative of Australia supported the action proposed in the Executive Summary of the paper and had no comment to make on the timing of the Diplomatic Conference. He joined previous speakers in welcoming China's offer to host the meeting. The Representative of Australia endorsed the comments made by the Representatives of Argentina and France. With regard to the comments made by the Representative of Romania, he underscored that different legal processes required different ratification processes. Australia had not been in a position to sign the two Conventions relating to compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks on the day that they had been adopted by the Diplomatic Conference due to its legal process.

28. The Representative of the Republic of Korea expressed appreciation to LEB for its excellent work. He indicated that, while he had no difficulty with convening the Diplomatic Conference in 2010, there were many unresolved issues to be addressed beforehand. The Representative of the Republic of Korea suggested that the Legal Committee reconsider and resolve those issues prior to the Diplomatic Conference. In thanking China for its offer to host the meeting, he supported convening it in Shanghai. With regard to the points raised by the Representative of Japan, the Representative of the Republic of Korea suggested that LEB verify the records of the Legal Committee's deliberations and resolve any discrepancies before transmitting the draft texts to amend The Hague and Montréal Conventions to States for comment.

29. The Representative of the United Kingdom emphasized that many of the outstanding issues were political in nature and thus only resolvable at the Diplomatic Conference. In thanking China for its offer, he affirmed that Shanghai would be an excellent venue for the Diplomatic Conference. Observing that China was proposing that it coincide with the World Expo 2010, which would take place from 1 May to 31 October 2010, the Representative of the United Kingdom suggested that it be left to the Secretariat and China to select suitable dates.

30. The Representative of Ecuador joined previous speakers in supporting the action proposed in the Executive Summary of the paper. He endorsed the comments made by the Representatives of Romania and Singapore, in particular with regard to paragraphs e) and f) on the non-amendment of Rule 31 of the Rules of Procedure of the Legal Committee and the reactivation of the Secretariat Study Group on Unruly Passengers. In congratulating China on its offer to host the Diplomatic Conference, the Representative of Ecuador assured it of his State's full co-operation.

31. In then taking the action proposed in the Executive Summary of C-WP/13414, as amended by the President of the Council in light of the discussion, the Council:

- a) requested the Secretary General to circulate the draft consolidated texts of The Hague and Montréal Conventions with the amendments proposed by the Legal Committee, and the Report of the 34th Session of the Legal Committee (Doc 9926-LC/194) to: all Contracting States; all non-Contracting States; those international organizations which had been invited to attend the 34th Session of the Legal Committee as observers; the regional civil aviation commissions (ACAC, AFCAC, ECAC and LACAC); and Palestine;

- b) requested the Secretary General to circulate the summary minutes of this item setting forth the comments made by Representatives on the draft consolidated texts to the said States, organizations and commissions and invite them to submit their comments within a period of not less than four months;
- c) decided, in principle, to convene a Diplomatic Conference to finalize and adopt the draft texts to amend The Hague and Montréal Conventions in Shanghai, China, on dates to be decided in consultations between the Representative of China and the Secretariat;
- d) decided to invite to participate in the Diplomatic Conference: all Contracting States; all non-Contracting States, with voting rights; all observers invited to participate in the 34th Session of the Legal Committee; the regional civil aviation commissions (ACAC, AFCAC, ECAC and LACAC) as observers; and Palestine as observer (in accordance with Assembly Resolution A22-6);
- e) noted the decision of the Legal Committee not to amend Rule 31 of its Rules of Procedure relating to the participation of observers; and
- f) noted that the Secretariat Study Group on Unruly Passengers would be reactivated after the Diplomatic Conference.

32. The reservation expressed by the Representative of Japan (*cf.* paragraphs 5 and 13 above) regarding C-WP/13414 and the distribution of the draft text to amend the Montréal Convention set forth in Appendix A thereto referred to in paragraph 31 a) was duly noted. It was understood, with regard to paragraph 31 c), that the dates for the Diplomatic Conference would be in 2010, that they would not, to the greatest extent possible, overlap with the dates of other ICAO meetings, and that they would be communicated to the Council in due course.

(...)

— END —



## INTERNATIONAL CONFERENCE ON AIR LAW

(Beijing, 30 August to 10 September 2010)

### PROVISIONAL AGENDA

1. Opening of the Conference
2. Adoption of the Agenda
3. Adoption of the Rules of Procedure
4. Election of the President and the Vice-Presidents of the Conference
5. Establishment of the Credentials Committee
6. Organization of the work:
  - a) procedure for the consideration of the draft consolidated text of the Montreal Convention of 1971 as amended by the Airports Protocol of 1988 with amendments proposed by the Legal Committee; the draft consolidated text of The Hague Convention of 1970 with amendments proposed by the Legal committee; and the corresponding protocols of amendments; and
  - b) establishment of the Commission of the Whole and Committees as necessary
7. Election of the Chairman of the Commission of the Whole
8. Report of the Credentials Committee
9. Consideration of the draft consolidated texts and draft protocol texts
10. Adoption of the Protocols and Consolidated Texts
11. Adoption of the Final Act of the Conference and of any other instruments, recommendations and resolutions resulting from its work
12. Signature of the Final Act and of the Protocols.



## INTERNATIONAL CONFERENCE ON AIR LAW

(Beijing, 30 August to 10 September 2010)

### PROVISIONAL RULES OF PROCEDURE<sup>\*</sup>

#### **Rule 1 (Composition of the Conference)**

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

#### **Rule 2 (Credentials)**

- (1) The credentials of representatives of the States, their alternates and advisers and of observers shall be submitted to the Secretary General of the Conference if possible not later than twenty-four hours after the opening of the Conference. The credentials of representatives shall be issued either by the Head of the State or Government, or by the Minister for Foreign Affairs. No person shall be the representative of more than one State.
- (2) Credentials of observers shall be issued by the head of the organization.

#### **Rule 3 (Credentials Committee)**

- (1) A Credentials Committee shall be established at the beginning of the Conference. It shall consist of five members representing five States nominated by the President of the Conference.
- (2) The Credentials Committee shall elect its own Chairman and shall examine the credentials of representatives and observers and report to the Conference without delay.

#### **Rule 4 (Eligibility for participation in meetings)**

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

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<sup>\*</sup> *In these Rules of Procedure, the use of the male gender should be understood to include both male and female persons.*

**Rule 5 (Officers)**

- (1) The Conference shall elect its President. Until such election, the President of the ICAO Council or, in his absence, his nominee shall act as President of the Conference.
- (2) The Conference shall elect five Vice-Presidents and the Chairman of the Commission of the Whole referred to in Rule 6.
- (3) The Conference shall have a Secretary General who shall be the Secretary General of ICAO or his nominee.

**Rule 6 (Commissions, Committees and Working Groups)**

- (1) The Conference shall establish a Commission of the Whole open to all Delegations, and a Drafting Committee and such other committees of limited membership, as it may deem necessary.
- (2) The Commission of the Whole, the Drafting Committee and any other committees shall establish such working groups as they may consider to be necessary or desirable.
- (3) The Drafting Committee, any other committee and working groups shall elect their own Chairmen.

**Rule 7 (Powers of the presiding Officer)**

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

**Rule 8 (Public and private meetings)**

Meetings of the Conference and the Commission of the Whole shall be held in public, unless the Conference decides otherwise. Meetings of committees and working groups shall be held in private unless the body concerned decides otherwise.

**Rule 9 (Participation of observers)**

Observers may participate in the deliberations of the Conference or any body thereof when the respective meetings are not held in private. With respect to private meetings, individual observers may be invited by the body concerned to attend and to be heard.

**Rule 10 (Quorum)**

A majority of the States represented at the Conference or at any body thereof and whose representatives have not notified the Secretary General of their departure shall constitute a quorum.

**Rule 11 (Speakers)**

(1) The presiding Officer shall call upon speakers in the order in which they have expressed their desire to speak; he may call a speaker to order if the speaker's observations are not relevant to the subject under discussion.

(2) Generally, no delegation should be called to speak a second time on any question except for clarification, until all other delegations desiring to speak have had an opportunity to do so.

(3) The presiding Officer may close the list of speakers, adjourn or close the debate and limit the time allowed to each speaker and the number of times each speaker may speak on any question, unless the body concerned decides otherwise. When the time allowed to each speaker is limited and a speaker has spoken for his allotted time, the presiding Officer shall call him to order without delay.

(4) At meetings of the Conference, the Chairman of the Commission of the Whole or a committee may be accorded precedence for the purpose of explaining the conclusions arrived at by the body concerned. In Commission or committee meetings, a similar precedence may be given to the Chairman of a working group.

**Rule 12 (Points of Order)**

During the discussion on any matter, and notwithstanding the provisions of Rule 11, a representative may at any time raise a point of order, and the point of order shall be immediately decided by the presiding Officer. Any representative may appeal against the ruling of the presiding Officer and any discussion on the point of order shall be governed by the procedure stated in Rule 14. The ruling of the presiding Officer shall stand unless over-ruled by a majority of votes cast. A representative speaking on a point of order may speak only on this point, and may not speak on the substance of the matter under discussion before the point was raised.

**Rule 13 (Motions and Amendments)**

(1) A motion or amendment shall not be discussed until it has been seconded. Motions and amendments may be presented and seconded only by representatives. However, observers may make a motion or amendment provided that such motion or amendment is seconded by the representatives of two States.

(2) A motion shall not be withdrawn when an amendment to the motion is under discussion or has been adopted. A motion which has been withdrawn may be reintroduced by any representative.



**Rule 14 (Procedural matters)**

Subject to Rule 13(1) any representative may move at any time for the suspension or adjournment of the meeting, the adjournment of the debate on any question, the deferment of discussion of an item, or the closure of the debate on an item. After such a motion has been made and explained by its proposer, only one speaker shall normally be allowed to speak in opposition to it, and no further speeches shall be made in its support before a vote is taken. Additional speeches on such motion may be allowed at the discretion of the presiding Officer, who shall decide the priority of recognition.

**Rule 15 (Order of Procedural Motions)**

Subject to Rule 12, the following motions shall have priority over all other motions, and shall be taken in the following order:

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

**Rule 16 (Reconsideration of Proposals)**

When a proposal has been adopted or rejected it may not be reconsidered unless the Conference, by a two-thirds majority of the representatives present and voting, so decides. Permission to speak on a motion to reconsider shall be accorded only to the mover and one other supporter and to two speakers opposing the motion, after which it shall be put immediately to the vote.

**Rule 17 (Discussions in Working Groups)**

Working groups shall conduct their deliberations informally and Rules 11(3), 12, 13, 14, 15 and 16 shall not apply to them.

**Rule 18 (Voting Rights)**

- (1) Each State duly represented at the Conference or at any body thereof shall have one vote.
- (2) Observers shall not be entitled to vote.

**Rule 19 (Voting of presiding Officer)**

The presiding Officer of the Conference or of any of its bodies shall have the right of vote on behalf of his State.

**Rule 20 (Majority required)**

- (1) Decisions of the Conference on all matters of substance shall be taken by a two-thirds majority of the representatives present and voting. Decisions on matters of procedure shall be taken by a majority of the representatives present and voting.
- (2) If the question arises whether a matter is one of procedure or of substance, the presiding Officer shall rule on the question. An appeal against this ruling shall immediately be put to the vote and the presiding Officer's ruling shall stand unless the appeal is approved by a majority of the representatives present and voting.
- (3) For the purpose of these rules, the phrase "representatives present and voting" means representatives present and casting an affirmative or negative vote. Representatives abstaining from voting or casting an invalid vote shall be considered as not voting.

**Rule 21 (Method of Voting)**

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

**Rule 22 (Conduct during Voting)**

After the presiding Officer has announced the beginning of voting, no representative shall interrupt the voting except on a point of order in connection with the actual conduct of the voting. Except in the case of elections held by secret ballot, the presiding Officer may permit representatives to explain their votes after the voting. The presiding Officer may limit the time to be allowed for such explanations.

**Rule 23 (Division of Proposals and Amendments)**

- (1) Parts of a proposal or amendment thereto shall be voted on separately if the presiding Officer, with the consent of the proposer, so decides or if a representative requests that the proposal or amendment thereto be divided and the proposer raises no objection. If the proposer objects to a request for division, permission to speak on the request shall be given first to the representative making the request to divide the proposal or amendment, and then to the mover of the original proposal or amendment under discussion, after which the request to divide the proposal or amendment shall be put immediately to the vote.
- (2) If all the operative parts of the proposal or amendment have been rejected, the proposal or amendment shall be considered to have been rejected as a whole.

**Rule 24 (Voting on Amendments)**

Any amendment to a motion shall be voted on before a vote is taken on the motion. When two or more amendments are moved to a motion, the vote should be taken on them in their order of remoteness from the original motion, commencing with the most remote. The presiding Officer

shall determine whether a proposed amendment is so related to the motion as to constitute a proper amendment thereto, or whether it must be considered as an alternative or substitute motion.

**Rule 25 (Voting on Alternative or Substitute Motions)**

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

**Rule 26 (Decisions on Competence)**

Subject to Rule 12, any motion calling for a decision on the competence of the Conference to discuss any matter or to adopt a proposal or an amendment submitted to it shall be put to the vote before the matter is discussed or a vote is taken on the proposal or amendment in question.

**Rule 27 (Tie vote)**

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

**Rule 28 (Proceedings of the Commission, Committees and Working Groups)**

Subject to Rule 17, Rules 11 to 27 above shall be applicable, *mutatis mutandis*, to the proceedings of the Commission of the Whole, committees and working groups, except that decisions of such bodies shall be taken by a majority of the representatives present and voting but not in the case of a reconsideration of proposals or amendments in which the majority required shall be that established by Rule 16.

**Rule 29 (Languages)**

- (1) Documents of the Conference shall be prepared and circulated in the English, Arabic, Chinese, French, Russian and Spanish languages.
- (2) The English, Arabic, Chinese, French, Russian and Spanish languages shall be used in the deliberations of the Conference, the Commission of the Whole and the Drafting Committee. Speeches made in any of the six languages shall be interpreted into the other five languages, except where such interpretation is dispensed with by unanimous consent.

(3) Any representative may make a speech in a language other than the official languages. In this case the representative shall provide for interpretation into one of the working languages. Interpretation into the other working languages by the interpreters of the Secretariat may be based on the interpretation given in the first working language.

(4) Documents and written statements submitted by observers will be distributed by the Secretariat to the delegations at the Conference in the language in which they have been presented.

**Rule 30 (Record of Proceedings)**

(1) Minutes of the meetings of the Conference shall be prepared by the Secretariat and approved by the President of the Conference.

(2) Proceedings of the Commission of the Whole, committees and working groups shall be recorded in such form as the body concerned may decide.

**Rule 31 (Amendment of the Rules of Procedure)**

These Rules may be amended, or any portion of the Rules may be suspended, at any time by a decision of the Conference taken by a two-thirds majority vote of the representatives present and voting.

**Rule 32 (Signature of Instruments)**

(1) The Final Act resulting from the deliberation of the Conference shall be submitted for signature by the delegations.

(2) Full Powers shall be required of each representative who signs any international legal instrument which may be drawn up and opened for signature by the Conference.

(3) Full Powers shall be issued either by the Head of State or Head of Government, or by the Minister for Foreign Affairs.

**Rule 33 (Representative – Definition)**

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



**DRAFT CONSOLIDATED TEXT OF THE MONTREAL CONVENTION OF 1971  
AS AMENDED BY THE AIRPORTS PROTOCOL OF 1988 WITH  
AMENDMENTS PROPOSED BY THE LEGAL COMMITTEE**

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 1**

1. Any person commits an offence if **that person** ~~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 **or she** knows to be false, thereby endangering the safety of an aircraft in flight; or

- (f) uses an aircraft in service for the purpose of causing death, serious bodily injury, or serious damage to property or the environment; or
- (g) releases or discharges from an aircraft in service any BCN weapon (as defined in Article 2 except paragraphs (a)(ii) and (b)(iii)) or explosive, radioactive, or similar substances in a manner that causes or is likely to cause death, serious bodily injury or serious damage to property or the environment; or
- (h) uses against or on board an aircraft in service any BCN weapon or explosive, radioactive, or similar substances in a manner that causes or is likely to cause death, serious bodily injury or serious damage to property or the environment; or
- [(i) transports, causes to be transported, or facilitates the transport of, on board an aircraft:
  - (1) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, with or without a condition, as is provided for under national law, death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act; or
  - (2) any BCN weapon, knowing it to be a BCN weapon as defined in Article 2; or
  - (3) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to a safeguards agreement with the International Atomic Energy Agency; or
  - (4) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose.]
- [(i) transports, causes to be transported or facilitates the transport on board an aircraft of the following items, knowing that it is to be used to facilitate an act intended to cause [with or without a condition] death or serious bodily injury to a civilian [or to any person not taking an active part in the hostilities in a situation of armed conflict], when the purpose of such act, by its nature or context, is to intimidate a population or to compel a government or an international organization to do or to abstain from doing any act:
  - (1) any explosive or radioactive material; or
  - (2) any BCN weapon, knowing it to be a BCN weapon as defined in Article 2; or
  - (3) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material [knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to a safeguards agreement with the International Atomic Energy Agency]; or
  - (4) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon [knowing

*that it is intended to be used for such purpose].*

1 *bis.* Any person commits an offence if ~~that person he~~ unlawfully and intentionally, using any device, substance or weapon:

- (a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or
- (b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport,

if such an act endangers or is likely to endanger safety at that airport.

1 *ter.* Any person also commits an offence if that person makes a credible threat or unlawfully and intentionally causes any person to receive a credible threat to commit any of the offences in subparagraphs (a), (b), (c), (d), (f), (g) and (h) of paragraph 1 or an offence in paragraph 1 *bis*.

2. Any person also commits an offence if ~~he~~ ~~that person~~ :

- (a) attempts to commit any of the offences ~~mentioned~~ set forth in paragraphs 1 or ~~paragraph~~ 1 *bis* of this Article; or
- (b) organizes or directs others to commit an offence set forth in paragraphs 1, 1 *bis*, 1 *ter* or 2(a) of this Article; or
- ~~(c)~~ participates as an accomplice in ~~is an accomplice of a person who commits or attempts to commit any such~~ an offence set forth in paragraphs 1, 1 *bis*, 1 *ter* or 2(a) of this Article; or
- (d) knowing that a person has committed an act that constitutes an offence set forth in paragraphs 1, 1 *bis*, 1 *ter* or 2(a) of this Article, or that a person is wanted for criminal prosecution by law enforcement authorities for such an offence or has been sentenced for such an offence, assists that person to evade investigation, prosecution or punishment.

3. Each State Party shall also establish as offences, whether or not any of the offences set forth in paragraphs 1, 1 *bis* or 1 *ter* of this Article is actually committed or attempted, either or both of the following:

- (a) agreement with one or more other persons to commit an offence set forth in paragraphs 1, 1 *bis*, 1 *ter* or 2(a) of this Article and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement; or
- (b) contribution in any other way to the commission of one or more offences set forth in paragraphs 1, 1 *bis*, 1 *ter* or 2(a) of this Article by a group of persons acting with a common purpose, intentionally and either:

- (i) with the aim of furthering the general criminal activity or purpose of the group, where such activity or purpose involves the commission of an offence set forth in paragraphs 1, 1 *bis*, 1 *ter* or 2(a) of this Article; or
- (ii) in the knowledge of the intention of the group to commit an offence set forth in paragraphs 1, 1 *bis*, 1 *ter* or 2(a) of this Article.

## 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;
- (c) “Air navigation facilities” include signals, data, information or systems necessary for the navigation of the aircraft;
- (d) (to be renumbered)
- (e) “Toxic chemical” means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere;
- (f) “Radioactive material” means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment;
- (g) “Nuclear material” means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore residue; or any material containing one or more of the foregoing;



- (h) “Uranium enriched in the isotope 235 or 233” means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.
- (i) “BCN weapon” means:
- (a) “biological weapons”, which are:
- (i) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or
- (ii) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.
- (b) “chemical weapons”, which are, together or separately:
- (i) toxic chemicals and their precursors, except where intended for:
- (A) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; or
- (B) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or
- (C) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or
- (D) law enforcement including domestic riot control purposes,
- as long as the types and quantities are consistent with such purposes;
- (ii) munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (b)(i), which would be released as a result of the employment of such munitions and devices;
- (iii) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b)(ii).
- (c) nuclear weapons and other nuclear explosive devices.

(j) “Precursor” means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system.

[(j) the terms “source material” and “special fissionable material” have the same meaning as given to those terms in the Statute of the International Atomic Energy Agency, done at New York on 26 October 1956.]

### ARTICLE 3

Each ~~Contracting State~~ Party undertakes to make the offences ~~set forth~~ ~~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 ~~sub~~paragraphs ~~1~~-(a), (b), (c), ~~and~~ (e), (f), (g), (h) and (i) 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), (f), (g), (h) and (i) 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 ~~Parties~~ mentioned in Article 9 and in the cases ~~set forth~~ ~~mentioned~~ in subparagraphs (a), (b), (c), ~~and~~ (e), (f), (g), (h) and (i) 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 4 bis**

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, the Convention on International Civil Aviation and international humanitarian law.
2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.
3. The provisions of paragraph 2 of the present Article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.

**[ARTICLE 4 ter**

1. *Nothing in this Convention shall affect the rights, obligations and responsibilities under the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London and Moscow on 1 July 1968, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, done at Washington, London and Moscow on 10 April 1972, or the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, done at Paris on 13 January 1993, of States Parties to such treaties.*
2. *It shall not be an offence within the meaning of this Convention to transport an item or material covered by Article 1, paragraph 1, subparagraph (i)(3) or, insofar as it relates to a nuclear weapon or other nuclear explosive device, Article 1, paragraph 1, subparagraph (i)(4), if such item or material is transported to or from the territory of, or is otherwise transported under the control of, a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons where:*
  - (a) the resulting transfer or receipt, including internal to a State, of the item or material is not contrary to such State Party's obligations under the Treaty on the Non-Proliferation of Nuclear Weapons and,*
  - (b) if the item or material is intended for the delivery system of a nuclear weapon or other nuclear explosive device of a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons, the holding of such weapon or device is not contrary to that State Party's obligations under that Treaty.]*

**[ARTICLE 4 ter**

1. ~~*Nothing in this Convention shall affect the rights, obligations and responsibilities under the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London and Moscow on 1*~~

~~July 1968, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, done at Washington, London and Moscow on 10 April 1972, or the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, done at Paris on 13 January 1993, of States Parties to such treaties.~~

~~2. ————— It shall not be an offence within the meaning of this Convention to transport an item or material covered by Article 1, paragraph 1, subparagraph (i)(3) or, insofar as it relates to a nuclear weapon or other nuclear explosive device, Article 1, paragraph 1, subparagraph (i)(4), if such item or material is transported to or from the territory of, or is otherwise transported under the control of, a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons where:~~

~~(a) the resulting transfer or receipt, including internal to a State, of the item or material is not contrary to such State Party's obligations under the Treaty on the Non-Proliferation of Nuclear Weapons and,~~

~~(b) if the item or material is intended for the delivery system of a nuclear weapon or other nuclear explosive device of a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons, the holding of such weapon or device is not contrary to that State Party's obligations under that Treaty.<sup>1</sup>~~

## ARTICLE 5

1. Each ~~Contracting~~ State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1 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 or her principal place of business or, if the lessee has no such place of business, his or her permanent residence, in that State;
- (e) when the offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence in the following cases:

- (a) when the offence is committed against a national of that State;
- (b) when the offence is committed by a stateless person who has his or her habitual residence in the territory of that State.

<sup>1</sup> Note by the Secretariat: Article 4 *ter* is presented in two versions, corresponding to the two versions of Article 1, paragraph 1 (i).

3. Upon ratifying, accepting, approving or acceding to this Protocol, each State Party shall notify the Depositary of the jurisdiction it has established under its national law in accordance with paragraph 2 of this Article. Should any change take place, the State Party concerned shall immediately notify the Depositary.

24. Each Contracting State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth mentioned in Article 1, in the case where the alleged offender is present in its territory and it does not extradite that person him pursuant to Article 8 to any of the States Parties that have established their jurisdiction in accordance with the applicable set forth mentioned in paragraphs 1 or 2 of this Article with regard to those offences.

36. 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 Party in the territory of which the offender or the alleged offender is present, shall take him or her into custody or take other measures to ensure his or her 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 or she is a national.

4. When a State Party, pursuant to this Article, has taken a person into custody, it shall immediately notify the States Parties mentioned in which have established jurisdiction in accordance with under Article 5, paragraphs 1 and established jurisdiction and notified the Depositary under Article 5, paragraphs 2 and 3, the State of nationality of the detained person and, if it considers it advisable, any other interested States Parties of the fact that such person is in custody and of the circumstances which warrant his that person's detention. The State Party which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States Parties and shall indicate whether it intends to exercise jurisdiction.

## ARTICLE 7

The Contracting State Party in the territory of which the alleged offender is found shall, if it does not extradite him or her, 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 7 bis**

Any person who is taken into custody, or regarding whom any other measures are taken or proceedings are being carried out pursuant to this Convention, shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

**ARTICLE 8**

1. The offences set forth in Article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between Contracting States Parties. Contracting States Parties undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a Contracting State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State Party 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 set forth in Article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. Contracting States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in Article 1 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 Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with Article 5, paragraphs 1 (b), (c), and (d) and (e) and who have established jurisdiction in accordance with Article 5, paragraph 2.
5. The offences set forth in subparagraphs (a) and (b) of paragraph 3 of Article 1 shall, for the purpose of extradition between States Parties, be treated as equivalent.

**ARTICLE 8 bis**

None of the offences set forth in Article 1 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

**ARTICLE 8 ter**

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance if the requested State Party has substantial grounds for believing that the request

for extradition for offences set forth in Article 1 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

## ARTICLE 9

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

2. When, due to the commission of one of the offences ~~set forth mentioned~~ in Article 1, a flight has been delayed or interrupted, any ~~Contracting~~ State ~~Party~~ 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 ~~Parties~~ 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 ~~Party~~ having reason to believe that one of the offences ~~mentioned~~ set forth in Article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States ~~Parties~~ which it believes would be the States ~~set forth mentioned~~ in Article 5, paragraphs 1 and 2.

### ARTICLE 13

Each Contracting State Party 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 Parties 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 Parties shall not be bound by the preceding paragraph with respect to any Contracting State Party having made such a reservation.

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

—END—





**DRAFT CONSOLIDATED TEXT OF THE HAGUE CONVENTION OF 1970  
WITH AMENDMENTS PROPOSED BY THE LEGAL COMMITTEE**

**PREAMBLE**

THE STATES PARTIES TO THIS CONVENTION

CONSIDERING that unlawful acts of seizure or exercise of control of aircraft in ~~service 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").~~

1. Any person commits an offence if that person unlawfully and intentionally seizes or exercises control of an aircraft in service by force or threat thereof, or by coercion, or by any other form of intimidation, or by any technological means.

2. Any person also commits an offence if that person makes a credible threat or unlawfully and intentionally causes any person to receive a credible threat to commit an offence in paragraph 1.

3. Any person also commits an offence if that person:

- (a) attempts to commit an offence set forth in paragraph 1 of this Article; or
- (b) organizes or directs others to commit an offence set forth in paragraphs 1, 2, or 3(a) of this Article; or
- (c) participates as an accomplice in an offence set forth in paragraphs 1, 2 or 3(a) of this Article; or
- (d) knowing that a person has committed an act that constitutes an offence set forth in paragraphs 1, 2 or 3(a) of this Article, or that a person is wanted for criminal prosecution by law enforcement authorities for such an offence or has been sentenced for such an offence, assists that person to evade investigation, prosecution or punishment.

4. Each State Party shall also establish as offences, whether or not any of the offences set forth in paragraphs 1, 2 or 3(a) of this Article is actually committed or attempted, either or both of the following:

- (a) agreement with one or more other persons to commit an offence set forth in paragraphs 1, 2 or 3(a) of this Article and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement; or
- (b) contribution in any other way to the commission of one or more offences set forth in paragraphs 1, 2 or 3(a) of this Article by a group of persons acting with a common purpose, intentionally and either:
  - (i) with the aim of furthering the general criminal activity or purpose of the group, where such activity or purpose involves the commission of an offence set forth in paragraphs 1, 2 or 3(a) of this Article; or
  - (ii) in the knowledge of the intention of the group to commit an offence set forth in paragraphs 1, 2 or 3(a) of this Article.

## Article 2

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

## Article 3

1. 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 pre-flight 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 sub-paragraph (a) of this Article. 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 set forth 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 3 bis**

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, the Convention on International Civil Aviation and international humanitarian law.
2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.
3. The provisions of paragraph 2 of the present Article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.

#### **Article 4**

1. Each Contracting State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1 and any other act of violence against passengers or crew committed by the alleged offender in connection with the offences, in the following cases:
  - (a) when the offence is committed in the territory of that State;
  - (a)(b) when the offence is committed against or on board an aircraft registered in that State;
  - (b)(c) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;

~~(e)~~(d) when the offence is committed against or on board an aircraft leased without crew to a lessee who has his or her principal place of business or, if the lessee has no such place of business, his or her permanent residence, in that State;

(e) when the offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence in the following cases:

(a) when the offence is committed against a national of that State;

(b) when the offence is committed by a stateless person who has his or her habitual residence in the territory of that State.

3. Upon ratifying, accepting, approving or acceding to this Protocol, each State Party shall notify the Depository of the jurisdiction it has established under its national law in accordance with paragraph 2 of this Article. Should any change take place, the State Party concerned shall immediately notify the Depository.

~~2-4.~~ Each Contracting State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1 ~~in the case~~ in the case where the alleged offender is present in its territory and it does not extradite that person ~~him~~ pursuant to Article 8 to any of the States Parties that have established their jurisdiction in accordance with ~~set forth mentioned in~~ paragraphs 1 or 2 of this Article.

~~3-5.~~ This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

## Article 5

The Contracting States Parties 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 Party in the territory of which the offender or the alleged offender is present, shall take him or her into custody or take other measures to ensure his or her 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 or she is a national.

4. When a State Party, pursuant to this Article, has taken a person into custody, it shall immediately notify the States Parties of registration of the aircraft, the State mentioned in which have established jurisdiction under Article 4, paragraphs 1 (e) and 2, and established jurisdiction and notified the Depositary under Article 4, paragraphs 2 and 3 ~~the State of nationality of the detained person~~ and, if it considers it advisable, any other interested States Parties of the fact that such person is in custody and of the circumstances which warrant his that person's detention. The State Party which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States Parties and shall indicate whether it intends to exercise jurisdiction.

### Article 7

The Contracting State Party in the territory of which the alleged offender is found shall, if it does not extradite him or her, 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 7 bis

Any person who is taken into custody, or regarding whom any other measures are taken or proceedings are being carried out pursuant to this Convention, shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

### Article 8

1. The offences set forth in Article 1 shall be deemed to be included as ~~an~~ extraditable offences in any extradition treaty existing between Contracting States Parties. Contracting States Parties undertake to include the offences as ~~an~~ extraditable offences in every extradition treaty to be concluded between them.
2. If a Contracting State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State Party 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 set forth in Article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. Contracting States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in Article 1 as ~~an~~ extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Each of the ~~The~~ offences shall be treated, for the purpose of extradition between Contracting States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with Article 4,

paragraphs 1 (b), (c), (d) and (e) and who have established jurisdiction in accordance with Article 4, paragraph 2.

5. The offences set forth in subparagraphs (a) and (b) of paragraph 4 of Article 1 shall, for the purpose of extradition between States Parties, be treated as equivalent.

#### **Article 8 bis**

None of the offences set forth in Article 1 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

#### **Article 8 ter**

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in Article 1 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

#### **Article 9**

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

2. In the cases contemplated by the preceding paragraph, any Contracting State Party 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 Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in Article 1 and other acts set forth 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 10 bis**

Any State Party having reason to believe that an offence set forth in Article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States Parties which it believes would be the States set forth in Article 4, paragraphs 1 and 2.

**Article 11**

Each Contracting State Party 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 Parties 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 Parties shall not be bound by the preceding paragraph with respect to any Contracting State Party having made such a reservation.

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

— END —