



LC/SC-NET-2

International Civil Aviation Organization

SPECIAL SUB-COMMITTEE ON THE PREPARATION OF ONE OR MORE INSTRUMENTS ADDRESSING NEW AND EMERGING THREATS

SECOND MEETING

Montréal, 19–21 February 2008

REPORT

TABLE OF CONTENTS

REPORT ON THE AGENDA

	Page
Item 1:	
Opening of the Meeting	
Place and Duration	1-1
Opening Address.....	1-1
Agenda of the Meeting.....	1-1
Attendance	1-1
Officers	1-1
Documentation	1-1
Item 2:	
Consideration of the issue of the unlawful transport by air of particularly dangerous goods and fugitives	2-1
Item 3:	
Refinement of certain provisions of the two draft texts prepared by the Sub-Committee at its first meeting	3-1
Item 4:	
Consideration of the form of the instruments	4-1
Item 5:	
Any other business	5-1
Appendix 1:	
Agenda	A1-1
Appendix 2:	
List of Participants	A2-1
Appendix 3:	
List of documents.....	A3-1
Appendix 4:	
Montreal Convention of 1971 as amended by the Airports Protocol of 1988 with Amendments proposed by the Special Sub-Committee of the Legal Committee	A4-1
Appendix 5:	
The Hague Convention of 1970 with amendments proposed by the Special Sub-Committee of the Legal Committee	A5-1

Agenda Item 1: Opening of the Meeting**1.1 Place and Duration**

1.1.1 The second meeting of the Sub-Committee was held in Montreal from 19 to 21 February 2008.

1.2 Opening Address

1.2.1 The Secretary General of ICAO, Dr. Taïeb Chérif opened the meeting and welcomed all participants. He conveyed to the Sub-Committee the appreciation by the Council of the progress so far achieved, and mentioned that this meeting was convened by the Council to consider the issue of the unlawful transport by air of particularly dangerous goods and related items, and fugitives. Moreover, the Sub-Committee may also take this opportunity to refine certain provisions of the two draft texts developed at its first meeting, and to consider the forms of the proposed instruments.

1.3 Agenda of the Meeting

1.3.1 The Sub-Committee adopted the provisional agenda shown in LC/SC-NET-2-WP/1 without change as its agenda, which is presented in **Appendix 1** hereto.

1.4 Attendance

1.4.1 The meeting was attended by 19 members of the Sub-Committee and 8 observers. The observers consisted of the United Nations Office on Drugs and Crime and 7 other observers which were invited by the Sub-Committee pursuant to Rule 24 of the *Rules of Procedure of the Legal Committee*. The list of participants of the Sub-Committee is shown in **Appendix 2** hereto.

1.5 Officers

1.5.1 The Chairman of the meeting was Mr. T. Olson (France). The Secretary was Mr. D. Wibaux, Director of the Legal Bureau. Mr. J. Huang, Legal Officer, acted as his Deputy. The Assistant Secretary was Ms. M. Weinstein, Legal Adviser. Dr. K. Rooney, Technical Officer, provided assistance. Other officials of the Organization also provided services to the Sub-Committee.

1.6 Documentation

1.6.1 A list of documents presented to the Sub-Committee is found in **Appendix 3** hereto.

Agenda Item 2: Consideration of the issue of the unlawful transport by air of particularly dangerous goods and fugitives

2.1 Consideration of this agenda item was based on LC/SC-NET-2-WP/2 and LC/SC-NET-2-WP/3 presented by Australia, and LC/SC-NET-2-WP/4, presented by India. WP/2 and WP/3 respectively presented draft texts for criminalization of the unlawful and intentional transport by civil aircraft of biological, chemical and nuclear weapons and related material, and of the transport of terrorist fugitives. It was recalled that the International Maritime Organization (IMO) amended in 2005 the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation* (SUA Convention) to cover these two offences. Since air carriage is also a significant mode of transport for people and goods, the working papers underlined the importance of undertaking similar work in ICAO to help ensure that international civil aviation is used for peaceful purposes and that the abuse of international civil aviation does not become a threat to the general security by facilitating acts of terrorism and the proliferation of weapons of mass destruction. WP/4 opposed the amendments proposed in WP/2, given the technical, legal and political complexity involved in the issue.

2.2 The Sub-Committee first considered WP/2 and WP/4. A number of members supported the proposal in WP/2. They believed that the criminalization of unlawful transport by air of particularly dangerous goods would be consistent with the obligations of States under the United Nations (UN) Security Council Resolution 1540, which recognized the urgent need for all States to take additional effective measures to prevent the proliferation of nuclear, chemical and biological weapons and their means of delivery. One member was opposed to the draft amendments proposed in WP/2, since they involved a number of important issues relating to non-proliferation of nuclear weapons, which should not be dealt with by ICAO but by the UN and the International Atomic Energy Agency (IAEA). This member recalled its strong reservation which had been expressed in the context of the IMO. Other members also expressed the views that the current progress of the work should not be derailed, that the possible impact upon the ratifications of the instrument should be considered, and that The Hague or Montreal Convention may not be the ideal place for this type of issue.

2.3 The Sub-Committee then considered the two possible options proposed in WP/2: one was to follow the precedent of the SUA Convention, and the other was to link the offence to the framework of Annex 18 to the *Convention on International Civil Aviation* (Chicago Convention). The Sub-Committee held an unanimous view that if the offence of unlawful transport of particularly dangerous goods is to be incorporated into an international air law instrument, it should not be done by way of reference to Annex 18 to the Chicago Convention. Annex 18 is subject to changes through the *Technical Instructions for the Safe Transport of Dangerous Goods by Air*. It may present enormous difficulties if domestic criminal laws have to refer to an exterior document to adapt to these constant changes. Some members were also of the view that this option does not adequately address the issue relating to dual-use items. Consequently, the majority of members preferred to follow the precedent of the SUA Convention.

2.4 In considering the draft text following the precedent of the SUA Convention (Attachment A to WP/2), the following definition of “transport” (paragraph 5 of the Attachment) was discussed:

“‘Transport’ means to initiate, arrange or exercise effective control, including decision-making authority, over the movement of a person or item.”

Several members believed that this definition was too broad and too vague. The import of the maritime definition may not suit the specific situation of air transport. Some terms may not be applicable or may need to be clarified. For example, it is not clear whether the term “initiate” applies to freight forwarders, cargo agents or others. The word “item” is also confusing. Further, while it was understood that the legal instruments would not be applicable to State aircraft, the absence of a uniform definition of State aircraft may create difficulties in the application of these provisions to aircraft which may or may not be considered as such. Moreover, a question may be raised whether the definition would also cover an attempt or contribution to commit the offence. In this context, some members also pointed out that in the chapeau of paragraph 1 (a) of the draft, “transports on board an aircraft in service”, the term “in service” would not be necessary. In view of these discussions, an informal group chaired by Ms. K. Leonard (Australia) had proposed to delete the definition of “transport” and amend the chapeau of paragraph 1 to read:

“Any person commits an offence if that person unlawfully and intentionally:

a) transports, causes to be transported, or facilitates the transport of, on board an aircraft:”

2.5 The Sub-Committee agreed with this proposal. In response to a question whether a credible threat to transport particularly dangerous goods would also constitute an offence, several members tended to support the view that the general provision concerning the credible threat as an offence should also be applicable to the transport of particularly dangerous goods.

2.6 The Sub-Committee then considered subparagraph 1 (a) (i) of the draft text concerning the transport of explosives or radioactive material. It was pointed out that in Article 3 *bis* 1 (b) (i) of the SUA Convention this act of transport constitutes an offence only when it is committed “for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act.” The author of WP/2 put this phrase in square brackets to draw the attention of the Sub-Committee since this element has not been used elsewhere in the new provisions proposed by this Sub-Committee. All members speaking on this subject believed that the text in the brackets should be retained in order to narrow the scope of the proposed offence and to ensure that only crimes of a more serious nature would be covered by the amendments to The Hague or Montreal Convention. The provision was not designed to punish acts relating to failure to obtain a required licence or permit for otherwise legal transport of the material. On the basis of this consideration, the Sub-Committee agreed to delete the square brackets and to retain the text.

2.7 In response to a query whether the term “damage” could be deleted from subparagraph 1 (a) (i) of the draft text, the Sub-Committee decided to retain it, since there might be situations where the material had not been used to cause death or injury but to cause the destruction of important facilities, such as a dam or nuclear reactor.

2.8 In discussing subparagraph 1 (a) (iii) of the draft text of the transport offence, one member mentioned that an IAEA comprehensive safeguards agreement does not apply to every State. Some States which are not parties to the Treaty on the Non-Proliferation of Nuclear Weapons (Non-Proliferation Treaty) had entered into voluntary safeguards agreements with the IAEA. Therefore, it was suggested to replace “an IAEA comprehensive safeguards agreement” with “a safeguards agreement with the IAEA”. Another member preferred to retain the term “comprehensive”. Other members suggested that further consultation on this issue was necessary. In view of this, the Sub-Committee decided, for the time being, to put both suggested phrases in square brackets.

2.9 One member queried whether the provisions relating to conspiracy and contributory offences would also be applicable to the transport offence. Some issues may need to be resolved regarding such application. The Sub-Committee agreed to revert to this matter later on the basis of a new working paper to be presented (paragraph 3.7 of this Report refers).

2.10 The Sub-Committee briefly discussed the definitions contained in paragraphs 2 to 4 of the draft text. It was noted that the proposed definitions of “BCN weapon”, “Toxic chemical” and others were based on various existing conventions. Upon further consultation, there would be a need to align these definitions to maintain consistency.

2.11 With respect to paragraphs 6 and 7 of the draft text, one member observed that the Non-Proliferation Treaty was highly discriminatory. Any use of the language in that treaty should be carefully evaluated regarding its acceptability.

2.12 The Sub-Committee then discussed the proposed offence of the transport of fugitives on the basis of WP/3. Many members expressed scepticism on the need to create such an offence. First of all, the situation of air transport is substantially different from that of maritime transport. Airline passengers are subject to strict control and screening procedures. While the transportation by air of illegal immigrants occurs from time to time, the situation is by no means comparable in magnitude and frequency with that of the sea. Accordingly, there is little added value to criminalize the transport of fugitives by air. Secondly, it would be difficult to define the concept of “fugitives”. It may include those who have been convicted by final judgements, as well as those who are merely suspects. For example, there is a well-known case in which an alleged offender charged with a serious offence under the Montreal Convention was acquitted in the final judgement. It would be difficult to decide whether some one transporting this alleged offender prior to the final judgement should be prosecuted for the offence of transporting fugitives. Thirdly, ICAO should focus on the security of civil aviation per se. The issue of fugitives goes beyond this mandate and could be handled, for example, by judicial assistance on a bilateral or multilateral basis.

2.13 Several members supported the criminalization of the transport of fugitives. It was pointed out that since the SUA Convention had included this offence, it would be inconsistent and undesirable if the transport of fugitives by sea is punishable while the transport by air is not. Pursuant to Resolution 1373 of the UN Security Council, all States shall prevent the movement of terrorists or terrorist groups. Compared with maritime transport, it would be more difficult for fugitives to gain access to a civil aircraft, but it is still possible to do so. In particular, the situation in general aviation may deserve attention. Some small or private planes had been used to carry fugitives. In view of this, it would be necessary to take international action to criminalize this act.

2.14 The Chairman summarized by stating that a large majority at the meeting did not favour the inclusion of the transport of fugitives offence in the work of the Sub-Committee, but consensus had not yet emerged. All members who spoke felt that should the offence be included, the drafting of the provision required tightening up. Accordingly, the draft text on this offence would not be deleted at this stage but be put in square brackets for further consideration in the Legal Committee. For the purpose of presentation, this draft text is included in Article 1, paragraph 1, subparagraph (j) of Appendix 4 to this Report. Furthermore, the draft provisions relating to the transport of particularly dangerous goods are for the time being included in Article 1, paragraph 1, subparagraph (i), Article 2, paragraphs (i) and (j), and Article 4 *ter*.

Agenda Item 3: Refinement of certain provisions of the two draft texts prepared by the Sub-Committee at its first meeting

3.1 Under this agenda item, the Sub-Committee first considered the refinement of the text of the Montreal Convention of 1971 as Amended by the Airports Protocol of 1988 with Amendments Proposed by the Special Sub-Committee of the Legal Committee, which is set out as Appendix 4 to the Report of the Sub-Committee for the meeting held from 3 to 6 July 2007.

3.2 Upon request by a member, the Sub-Committee agreed to amend the term “in a manner likely to cause death” in Article 1, paragraph 1, subparagraphs (f), (g) and (h) to read “in a manner that causes or is likely to cause death”. The Sub-Committee also agreed to remove the square brackets from the words “releases” and “discharges” in subparagraph (g) and to rephrase them as “releases or discharges”. It further decided that the term “serious” in subparagraphs (f), (g) and (h) of the French version should be aligned with other versions.

3.3 A question was raised whether the text of Article 1, paragraph 1, subparagraphs (g) and (h) could be narrowed down. The term “similar substances” was considered vague. Further, it was queried whether the term “potentially deadly materials” may have an open-ended effect to include material which could cause a chronic disease over a long term. Moreover, it was considered desirable to exclude the applicability of these provisions to non-terrorist acts, such as an act of a pilot who forgot to renew his or her licence when he or she sprayed pesticides on crops and subsequently caused death, injury or damage. While these types of acts may be punishable, they do not need to be subject to the international regime of extradite or prosecute. Some members, however, expressed reluctance to introduce the element of terrorist motive into these provisions. On the basis of these discussions, a member proposed to use “BCN weapon” to replace “toxic chemical” and “biological, or nuclear material”, thereby narrowing the scope of the provisions. While this proposal received some support, various members believed that this matter would have to be considered in conjunction with the definition of “BCN weapon” to be incorporated into the text. Accordingly, it was decided to put “BCN weapon or”, “toxic chemical”, and “biological, or nuclear material” all within square brackets for further consideration.

3.4 With regard to Article 1, paragraph 1, subparagraph (h), some members proposed the deletion of the term “or the environment”, since the provision was designed to protect lives and property on board aircraft. More members believed, however, that damage to the environment is possible. The Sub-Committee decided to retain the term “or the environment” and remove the square brackets.

3.5 In considering Article 1, paragraph 1 *ter*, the Sub-Committee decided to retain the term “under circumstances which indicate the credibility of the threat” and remove the square brackets. It was unanimously believed that only credible threats would be criminalized.

3.6 The Sub-Committee also agreed to delete the word “intentionally” in Article 1, paragraph 2, in line with recent UN conventions on terrorism, with the understanding that the element of intention is implied in the context of the provision. Also in line with the UN conventions, Article 1, paragraph 2, subparagraph (c) was amended to read: “participates as an accomplice in an offence set forth in paragraphs 1, 1 *bis*, 1 *ter* or 2(a) of this Article.”

3.7 LC/SC-NET-2-WP/6 was presented by Japan, which proposed to amend Article 1, paragraph 3 concerning conspiracy or “*association de malfaiteurs*”, if this paragraph is intended to apply to the transport offence. The general feeling of the Sub-Committee was that the paragraph had been the result of careful consideration at its last meeting and a debate should not be re-opened at this stage. It may be studied at a later stage whether this paragraph should or should not be applicable to the transport offence.

3.8 With respect to the definition of “air navigation facilities” in Article 2, paragraph (c), the Secretary informed the Sub-Committee that the Air Navigation Commission had been consulted on this matter and no objection was raised to this definition in the context of the Montreal Convention. The Sub-Committee agreed to retain this definition. One member recalled that the protection of navigation aids from unlawful interference was considered important when ICAO discussed the issues relating to the Global Navigation Satellite System in other *fora*. The definition proposed would provide added value for such protection. It was also agreed that the Russian version of the term should be aligned with Article 28 of the Chicago Convention. The Sub-Committee noted that with respect to other new definitions in subparagraphs (d) to (h) of Article 2, they would have to be considered in conjunction with the transport offence and the definitions of “BCN weapon” and “Precursor”.

3.9 In view of the insertion of the words “or other systems necessary for aircraft operation” after “air navigation facilities” in Article 1, paragraph 1, subparagraph (d), one member suggested and the Sub-Committee agreed that the same insertion should be made in Article 4, paragraph 5. Some members also believed that other paragraphs of Article 4 needed to be reviewed in light of the introduction of new offences. For instance, it should be determined whether new paragraph 3 of Article 1 concerning the conspiracy offence should be referred to in paragraph 6 of Article 4. Moreover, if the transport offences are included, paragraphs 2, 3 and 4 may need to be adjusted. Finally, paragraph 1 only excludes aircraft used in military, customs or police services but does not exclude all State aircraft. Consequently, the provisions of the transport offences, if adopted, may be applicable to certain State aircraft. This may cause concern in countries which have broad definitions of State aircraft, including aircraft used for search and rescue purposes.

3.10 One member reiterated the reservation it voiced at the first meeting concerning Article 4 *bis* (Military Exclusion Clause). The Sub-Committee decided not to reopen the discussion but invited the Rapporteur to cover the notion of international humanitarian law when she presented her report to the Legal Committee.

3.11 The proposed draft text to amend the Montreal Convention, except the final clauses, as further refined by the Second Meeting of the Special Sub-Committee, is set out as **Appendix 4** to this Report.

3.12 The Sub-Committee then considered the refinement of the text of The Hague Convention of 1970 with Amendments Proposed by the Special Sub-Committee of the Legal Committee, which is set out as Appendix 5 to the Report of the Sub-Committee for the meeting held from 3 to 6 July 2007. It was decided that all agreed changes mentioned in paragraphs 3.5 and 3.6 above in the context of the Montreal Convention would also be reflected in the refinement of Article 1, paragraphs 2 and 3 of the draft text for the amendments to The Hague Convention. Regarding Article 1, paragraph 1, some members preferred to delete the term “constraint”, and to add at the end of the paragraph the term “or by any technological means”. Other members preferred to retain the term “constraint”. The Sub-Committee decided to retain both terms in square brackets and leave the matter for determination by the Legal Committee.

3.13 The Sub-Committee agreed to remove the square brackets in Article 4, paragraph 1, subparagraphs (b) and (d) and to retain the text “against or” therein.

3.14 The Sub-Committee considered two proposals to amend Article 6 of both The Hague and Montreal Conventions on the basis of LC/SC-NET-2-WP/5 presented by Switzerland. The working paper first proposed to transplant Article 10, paragraph 1 of the *International Convention for the Suppression of Acts of Nuclear Terrorism* (Nuclear Terrorism Convention) into Article 6 of both Conventions. The Article contains the duty to investigate when certain information is received. Some members pointed out that Article 6, paragraph 2 of The Hague and Montreal Conventions already requires States to make a preliminary enquiry. It would be unnecessary to add the text of Article 10, paragraph 1 of the Nuclear Terrorism Convention. Accordingly, the Sub-Committee decided to maintain paragraphs 1 and 2 of Article 6 in their current form.

3.15 Regarding the phrase “States which would otherwise have jurisdiction” in Article 6, paragraph 4 of The Hague and Montreal Conventions, WP/5 proposed to use the term “have established” to replace “would otherwise have”, since it might be impossible for a domestic authority to determine which Parties “would otherwise have jurisdiction”. Several members, however, preferred to retain “would otherwise have”. Others pointed out that the change proposed by WP/5 was consistent with other UN Conventions, such as Article 10, paragraph 6 of the Nuclear Terrorism Convention. The Sub-Committee noted these views and decided to put the two options in square brackets for further consideration.

3.16 The proposed draft text to amend The Hague Convention, except the final clauses, as further refined by the Second Meeting of the Special Sub-Committee, is set out as **Appendix 5** to this Report.

Agenda Item 4: Consideration of the form of the instruments

4.1 Regarding the form of new instruments, two possibilities were mentioned: one is to adopt consolidated texts incorporating both existing and new provisions; another is to adopt protocols adding new provisions only. A suggestion was also made to follow the precedent of Cape Town, namely, to adopt an authentic text of amendments in the form of a protocol, and a consolidated text through a resolution of the diplomatic conference. The Secretary pointed out, however, that there might be technical difficulties in following the Cape Town precedent. In that case, all instruments were drafted *ab initio* in six official languages of ICAO. In the case of The Hague and Montreal Conventions, they were drafted in four languages at the time of their conclusion, but their amendments today would need to be in six languages. Since the authentic Arabic and Chinese texts do not exist, there might be some issues to be resolved concerning the amendments in these two languages.

Agenda Item 5: Any other business

5.1 With respect to the future work on this subject, many members believed that there would be no need for another meeting of the Sub-Committee and that the results of its work could be submitted to the Legal Committee for further consideration. The texts prepared by the Sub-Committee were sufficiently mature to be referred to the Legal Committee, with the exception of the issue of the unlawful transport by air of particularly dangerous goods and fugitives. This latter issue could be deliberated and decided upon in a wider body, such as the Legal Committee. One member preferred to have another meeting of the Sub-Committee convened with a view to producing more mature texts for the Legal Committee. In closing, the Chairman of the Sub-Committee stated that the decision to convene another meeting of the Sub-Committee should be made by the Council rather than by the Sub-Committee itself.

APPENDIX 1

**SPECIAL SUB-COMMITTEE ON THE PREPARATION
OF ONE OR MORE INSTRUMENTS ADDRESSING
NEW AND EMERGING THREATS**

SECOND MEETING

(Montreal, 19 – 21 February 2008)

AGENDA

- Item 1: Opening of the Meeting
- Item 2: Consideration of the issue of the unlawful transport by air of particularly dangerous goods and fugitives
- Item 3: Refinement of certain provisions of the two draft texts prepared by the Sub-Committee at its first meeting
- Item 4: Consideration of the form of the instruments
- Item 5: Any other business

APPENDIX 2
LIST OF PARTICIPANTS
MEMBERS

Australia	Leonard, K. L.
Brazil	Da Silva Pinto, R. De Lima, A. J. Coelho de Souza, L. M.
Canada	Lauzon, G., Q.C. Chambers, S. Fetz T. Gingras, M.-J. Jones, K Morrill, K. Zigayer, M.
China	Yang, Y. Wang, Y.
France	Olson, T. Besse, S. Deville-Fontinha, C. S.
Germany	Mendel, J.
India	Zaidi, N. Icumar, P. Annepurddy, R. S.
Italy	Bardaro, A. Farina, M. Ciancaglioni, P
Japan	Kawaguchi, Y. Kawano, S. Yamada, Y. Sekiguchi, S. Tanaka, M. Ito, T. Ito, M. Yoshioka, W.
Lebanon	Eid, S.
Mexico	Jiménez Hernández, D.
Nigeria	Gaiya, S. M. Oladele, A.

Russian Federation	Belyakov, A. Mnishko, V. V. Pasko, A. A. Tikhaze, K Volodina, V. Shiyan, D.
Senegal	Sourand, M.
Singapore	Tan, S. H.
South Africa	Mabaso, L. India, M. Magoai, N.
Switzerland	Cadrian, A. Noël, L.
United Kingdom	Keith, S. A. Gilson, H. L. Shepherd, K. McLachlan, R.
United States	Keller, A. N. Giovanniello, A. Jennison, M. B. Purcell, J. E.
OBSERVERS	
Colombia	Rueda, G. Bejarano, C.
Dominican Republic	Mendéz, E.
Greece	Katsanevaki, M.
Republic of Korea	Seo, W.-S.
Turkey	Gündoğdu, Y.
Uruguay	Davila, Hugo Veloso, M.
IATA	Piera, A. Atanassova, M.
United Nations Office on Drugs and Crime (UNODC)	De Feo, M.

APPENDIX 3**SPECIAL SUB-COMMITTEE ON THE PREPARATION
OF ONE OR MORE INSTRUMENTS ADDRESSING
NEW AND EMERGING THREATS****SECOND MEETING**

(Montreal, 19 – 21 February 2008)

LIST OF DOCUMENTS

LC/SC-NET-2-O/B	Order of Business for the First Day of the Meeting
LC/SC-NET-2-WP/1	Provisional Agenda
LC/SC-NET-2-WP/2	Draft Article: Unlawful Transport by Air of Particularly Dangerous Goods
LC/SC-NET-2-WP/3	Draft Article: Unlawful Transport by Air of Fugitives
LC/SC-NET-2-WP/4	Paper Presented by India
LC/SC-NET-2-WP/5	Duties to Investigate and to Inform
LC/SC-NET-2-WP/6	Proposals to the Article 1, Paragraph 3 in Appendix A 4 to the Report of the Special Sub-Committee (First Meeting, 3-6 July 2007)
LC/SC-NET-2 Flimsy No. 1	Proposal from Working Group: Transport of Materials Offence – Amendment to Attachment A, Working Group 2
LC/SC-NET-2 Flimsy No. 2	Incorporation of “BCN Weapon” into the Draft Protocol to the Montreal Convention

APPENDIX 4**MONTREAL CONVENTION OF 1971 AS AMENDED
BY THE AIRPORTS PROTOCOL OF 1988 WITH AMENDMENTS PROPOSED
BY THE SPECIAL SUB-COMMITTEE OF 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 other systems necessary for aircraft operation**, 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 in a manner that causes or is likely to cause 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 or] [toxic chemical,] explosive, radioactive, [biological, or nuclear material] [or other potentially deadly materials] [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] [toxic chemical,] explosive, radioactive, [biological, or nuclear material] [or other potentially deadly materials] [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.*

(i) *transports, causes to be transported, or facilitates the transport of, on board an aircraft:¹*

(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 [an International Atomic Energy Agency comprehensive safeguards agreement] [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.

[(j) *transports, causes to be transported, or facilitates the transport of, another person on board an aircraft knowing that the person has committed an act that constitutes an offence set forth in the treaties listed in the Annex², and intending to assist that person to evade criminal prosecution.*]

¹ Note by the Secretariat: The Sub-Committee did not decide where to insert the provisions concerning the transport offences. They are inserted here as subparagraphs (i) and (j) for presentation purposes)

² The Annex includes the following treaties:

- Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973
- International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979
- Convention on the Physical Protection of Nuclear Material, done at Vienna on 26 October 1979

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 threatens, under circumstances which indicate the credibility of the threat, to commit any of the offences in 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
- (bc) ~~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.

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:

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- *Protocol for the Suppression of Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988*
 - *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988*
 - *International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997*
 - *International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999*

- (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) “Biological material” means microbial or other biological agents, or toxins whatever their origin or method of production;
- (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” means³:

(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.

³ Note by the Secretariat: The Sub-Committee has not yet made any decision concerning the definitions of “BCN weapon” and “Precursor”. The definitions are inserted here as paragraphs (i) and (j) only for presentation purposes.

(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.*

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 subparagraphs (a), (b), (c), and (e), (f), (g) and (h) 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) and (h) 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 set forth mentioned in Article 9 and in the cases set forth mentioned in subparagraphs (a), (b), (c), and (e), (f), (g) and (h) 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 or other systems necessary for aircraft operation 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 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.

[ARTICLE 4 ter⁴

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 5

1. Each **Contracting State Party** shall take such measures as may be necessary to establish its jurisdiction over the offences in the following cases:

- (a) when the offence is committed in the territory of that State;
- (b) when the offence is committed against or on board an aircraft registered in that State;
- (c) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;

⁴ *Note by the Secretariat: The Sub-Committee has not yet made any decision concerning the adoption of this article. It is included here only for presentation purposes.*

- (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,⁵ 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, paragraphs 1 (a), (b) and (c) 1 *ter*, and in Article 1, paragraph 2, in so far as that paragraph relates to those offences, in the case where the alleged offender is present in its territory and it does not extradite that person him pursuant to Article 8 to any of the States set forth mentioned in paragraph 1 or 2 of this Article.

2 bis 5. 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, paragraphs 1 *bis* and 1 *ter*, and in Article 1, paragraph 2, in so far as that paragraph relates to those offences, in the case where the alleged offender is present in its territory and it does not extradite that person him pursuant to Article 8 to any of the States set forth mentioned in paragraph 1(a) or (e) or paragraph 2 of this Article.

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.

⁵ Note by the Secretariat: The term "Protocol" needs to be changed if it is eventually decided to adopt the consolidated texts of the Conventions. Alternatively, the wording of the SUA Protocol may be used, i.e.: "Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the [Depositary]. If such State Party subsequently rescinds that jurisdiction, it shall notify the [Depositary]."

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

ARTICLE 7

The ~~Contracting State 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 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. 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 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 required to establish their jurisdiction in accordance with Article 5, paragraphs 1 (b), (c), ~~and~~ (d) and (e).

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 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.

APPENDIX 5**THE HAGUE CONVENTION OF 1970 WITH AMENDMENTS PROPOSED BY
THE SPECIAL SUB-COMMITTEE OF 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[, constraint] or threat thereof, ~~or~~ by any other form of intimidation, *or by any technological means*.

2. Any person also commits an offence if that person threatens, under circumstances which indicate the credibility of the 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.

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 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.

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 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.

Article 4

1. Each Contracting State Party shall take such measures as may be necessary to establish its jurisdiction over the offences 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;

~~(c)~~(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 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.

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

Article 7

The ~~Contracting~~ State 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 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. 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 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 required to establish their jurisdiction in accordance with Article 4, paragraphs 1 (b), (c), (d) and (e).

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 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 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.